



K.D. Holdings Limited Resource Consent Application

Section 42A Hearing Report

LUC20/47704 – Land Use Consent Application for a Six Level Mixed Use Central City Development with Zone Height and Viewshaft Infringements, Removal of a Notable Tree and Partial Damage of an Archeological Feature.

Applicant:	K.D. Holdings Limited
Applicant's address for service:	BTW Company Limited
Site Address:	45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.
Legal Descriptions:	PT Section 683 Town of New Plymouth, PT Lot 6 DP 3466 and Lot 2 DP 15492.
Records of Title	TNF1/436, TNH4/976 and 510340
Site Area:	478 m ² more or less
Operative District Plan Zone:	Business A Environment Area
Proposed District Plan Zone:	City Centre Zone
Operative District Plan Overlays	Section 2 Cameron Street Viewshaft, Section 2 Victoria Street Viewshaft, Section 4 Marsland Hill Viewshaft, Height Management Area C, Height Management Area B and Notable Tree (ID 97 – Category 2) (Maps C24a and C24b)
Proposed District Plan Overlays	Section 2 Cameron Street Viewshaft, Section 2 Victoria Street Viewshaft, Section 4 Marsland Hill Viewshaft, Height Management Area C, Heritage Character Area and Notable Tree (ID 97 – Category 2).
Proposal:	Construction of a six-level mixed use building with a basement car park at the site described above. Levels 1 to 5 are proposed to be for commercial

	<p>tenancies and the top floor is proposed to be a three bedroom residential apartment. To facilitate the proposal it is required to relocate the Halamoana sculpture and to remove a notable tree located within a neighboring New Plymouth District Council owned parcel of land.</p>
<p>Activity Status:</p>	<p>The proposal is a Restricted Discretionary Activity under the following rules of the Operative New Plymouth District Plan: Bus12, Bus58, Bus87, Bus88, Bus90, OL50, OL63, OL71 and OL75</p> <p>The proposal is a Non-Complying activity under Rule TREE-R10 of the Proposed New Plymouth District Plan.</p>
<p>Date consent application received:</p>	<p>29/04/2020</p>
<p>Further information requested/report/s commissioned:</p>	<p>Provision of a more detailed site description, further assessment of effects associated with the building height including provision of a Landscape Visual Impact Assessment (LVIA), more detailed description of the heritage context, more detailed assessment of effects associated with the notable tree removal and a more detailed assessment of cultural effects including design and mitigation opportunities requested by Council on 03/06/2020.</p>
<p>Further information/report received:</p>	<p>Yes – An interim response was received on 29/06/2020 and a final response to the further information request was received on 04/09/2020 including all supporting documentation and a consolidated AEE. The response addressed the Section 92 requests with a suitable level of information to allow for the consideration of the application to continue.</p>
<p>Further information/report received following submissions period:</p>	<p>Following review of the response Section 92 response, input from Council specialists and the closing of the submissions period further information was sought on the tree life expectancy, impacts on heritage character buildings/area and basement car park function.</p>
<p>Notification Decision:</p>	<p>At the applicants request the application was publicly notified under Section 95A(3)(a) of the RMA.</p>

Submission Period:

10 September 2020

14 September 2020 to 9 October 2020

PURPOSE OF THIS REPORT

1. This Hearing Report has been prepared to assist the Independent Commissioner in the consideration of the K.D. Holdings Limited resource consent application, subject to Section 42A of the Resource Management Act 1991 ("the Act or RMA"). This report is to provide a recommendation as to whether the resource consent should be granted or refused and if granted what conditions it should be subject to. It is not a decision, and the recommendation should not read as such that it is a final decision.
2. The statutory provisions under the Act which will be applied and considered for the purposes of this report are:
 - Sections 104B and 104D regarding the assessment of the land use consent made under the Operative New Plymouth District Plan (ODP) and the Proposed New Plymouth District Plan (PDP). A bundling approach has been taken and therefore the most stringent activity status has been applied to the resource consent application being a Non-Complying Activity under rule TREE-R10 of the PDP.

PREPARATION OF REPORT & QUALIFICATIONS & EXPERIENCE

3. This report has been prepared by Luke Balchin, Senior Environmental Planner at New Plymouth District Council (NPDC) and has been reviewed and approved by Rowan Williams, the NPDC Planning Lead.
4. I am employed by the New Plymouth District Council and have been since March 2020. My qualifications are a bachelor's degree in Environmental Management Majoring in Policy and Planning and a Postgraduate Diploma in Resource Studies from the Lincoln University and I am an Intermediate Member of the New Zealand Planning Institute. I have had over 6 years of experience as a planner, 5.5 years as a consultant planner with Aurecon based in Tauranga before moving to New Plymouth in March 2020 to start my role at NPDC.
5. My experience is largely focussed around the preparation and processing of land use consent and subdivision consent applications. As a consultant planner I have prepared and presented planning evidence at a Council Hearing on one occasion. I have had considerable experience preparing and processing a variety of small, medium and large scale land use and subdivision consent applications including applications with a variety of cultural issues, policy issues, amenity issues and engineering issues or more complicated applications with a combination of the above mentioned matters.

Other Reports and Reviews Relied Upon

6. The following reports and communication have been used to inform the discussions and conclusions within my report.
 - Cultural Impact Assessment prepared by Ngāti te Whiti hapū;
 - Verbal and email comments from John Eagles - NPDC Network Management Lead;
 - Traffic comments from Andy Skerrett of AMTANZ;
 - Richard Bain - LVIA Peer Review Version 1 dated 30 July 2020 and LVIA Peer Review Version 2 dated 19 January 2021;
 - Verbal and e-mail commentary including recommended conditions from Council's Development Engineer Debbie Taplin regarding wastewater, water and stormwater;
 - Verbal and e-mail comments from Council's Tree Arborist, Josh Paice;
 - Technical Arborist Report Agonis Flexuosa DP Item 97;
 - Dan McCurdy Archaeologist of Geometria – Heritage Review 27/01/2020; and
 - The Applicant's final AEE dated 04/09/2020 including all appendices.

SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

Site Description

7. I carried out a site visit on 15 June 2020. The site visit included viewing the development site from multiple aspects including the relevant view-shaft locations. Several subsequent site visits have also been carried out to gain a greater appreciation of the site and its surroundings. It is also a location I frequently pass by on foot and I have since developed a greater appreciation of the location and its surroundings.
8. Predominantly the site consists of five land parcels all held in one Record of Title (TNF1/436) and owned by the applicant (K.D. Holdings Limited). The site consists of approximately 478m² overall. The application site also extends into a neighbouring site owned by NPDC and towards the east and northeast. This is partly due to enabling works with respects to the building foundations, the removal of a notable tree, the construction of a stairwell and inclusion of features which form part of the development including a canopy and the eastern entry foyer pavement area. The neighbouring land parcel affected is described as Lot 2 DP 15492, held in Record of Title TNH4/976 owned by the New Plymouth District Council. The relevant lots described are identified in Figure 1 below, the main application site is identified in red and Lot 2 DP 15492 which is owned by NPDC is identified in blue. The affected NPDC land is approximately identified in yellow. The site plans provide for a more accurate interpretation.
9. The site is located on the corner of Brougham Street and Powderham Street, Powderham Street is a State Highway (45) and Brougham Street is a local road. The site currently has vehicle access from Brougham Street.

10. The site is currently vacant and provides for leased car parking. In its present form the site contributes little in the way of any inner-city amenity or function. The neighbouring site to the east, which the building will extend into contains a notable tree. Further to the east is the Huatoki River which runs through a land parcel described as Lot 3 DP 15492 and is located on local purpose reserve. Across the Huatoki River is a Council owned multi-level carpark building. At this location the Huatoki River flows under the Metro Plaza. A mixture of commercial activities are located in proximity to the site along Brougham Street and to the south the site adjoins State Highway 45. Across State Highway 45 is the Victor Davies Reserve and commercial properties. The site also accommodates the Halamoana Sculpture at the corner of Powderham Street and Brougham Street. The sculpture will need to be relocated should the proposal proceed. To the north the site adjoins the Area 41 restaurant which is in a heritage building. The site also adjoins the Heritage Character area as identified in the Proposed District Plan. The sections of the building which extend in to the neighbouring NPDC allotment are subject to the Heritage Character Area described above.
11. The site sits on a vacant corner lot at the edge of the CBD. Partly due to this location, and in the context of the CBD, the site is a prominent location being a corner site and on the edge of what is identified as the CBD. For the last 17 years has been distinguishable due to the presence of the Halamoana Sculpture. However, and given the sites prominence and prime location, the site is significantly underutilised and has been for approximately 23 years. Currently the site is gravel car park accommodating up to 17 leased car parks. As detailed within the applicant's archaeological assessment the last time a building was located on the site was 1983.
12. The topography in the area slopes gently down in a south to north direction. However the site itself is generally flat as it has been cut in to what would have been the sites natural sloping contour.
13. Reticulated water, wastewater and stormwater mains are located along Brougham Street, Powderham Street and Devon Street. Power and telecommunication services are also available along Brougham Street, Powderham Street and Devon Street.



Figure 1: Site Location Plan

Surrounding Environment

14. The immediately surrounding environment has been well described within the applicant’s proposal, the description is adopted and quoted below.

"Land use is predominantly commercial in this area, with many retail and service businesses such as clothing stores, restaurants and motels along Brougham and Powderham Streets. On the northern side of Powderham Street, development is high density with site coverage commonly at 100% and multi-storeyed buildings

(e.g. the Grand Central Hotel at 40 Brougham Street and the NPDC-owned carpark building at 20 Powderham Street). Sir Victor Davies Park with mature trees is established southeast of the site on the opposite side of Powderham Street, along the Huatoki Stream. Huatoki Stream then crosses under the street to emerge temporarily through Lot 2 DP 15492, before going underground again beneath the buildings on the site."

15. Other predominant activities include visitor accommodation such as the Brougham Heights Motel across Powderham Street and the Nice Hotel further up Brougham Street. The now NPDC owned land which accommodates the metro plaza adjoins the site toward the north east. The metro plaza is now vacant, with exception to a handful of small business operations including Subway, a Beauty Salon and E-Cigarette store. It is anticipated that the Metro Plaza will in the near future be subject to significant change with a strategic direction toward daylighting the Huatoki River which the Metro Plaza currently covers.
16. The site adjoins the Heritage Character Area as described within the Council's Proposed District Planning Documents but is only partly located within the Heritage Character area where extending into the neighboring NPDC land. There are two nearby heritage buildings, one located across of Brougham Street to the west and the other adjoins the site to the north. Across of the Huatoki to the east is a multi-level parking building owned by NPDC.
17. The site fronts two streets, Brougham Street and Powderham Street. Brougham Street is classified as a local road in the District Plan while Powderham Street is a State Highway (45). Powderham Street forms part of New Plymouth's one way system moving high volumes of traffic in a west to east direction and the road is busy, particularly at peak times. Brougham Street carries little traffic in the context of the CBD and has a 30kph speed limit.
18. As described within the site description section, the site is in close proximity to the Huatoki River of which is defined as significant waterbody within the PDP. Currently the subject site is separated from the Huatoki River by the stone wall railway embankment, notable tree and decking area all within the NPDC owned lots described as Lots 2 and 3 DP 15492.
19. From a cultural context, and as described in greater detail within the CIA prepared by Ngāti te Whiti hapū, the area is surrounded by several cultural features including nearby pā/papakainga sites such as Pukākā Pā (Marsden Hill), Puke Arikī, Te Kawau, Mataipu Okoare and the most immediately relevant the Mawhera Pā and associated historic river trails along the Huatoki. In summary, and as with much of the CBD, the site and surrounding areas carry important cultural significance.
20. Overall the immediately surrounding area is consistent with its underlying zoning and carries CBD characteristics.

PROPOSAL

General

21. The applicant proposes to prepare the site located on the corner of Powderham Street and Brougham Street for the construction of a six storey building. The building will accommodate a mixture of uses but will be predominantly used for leased commercial office space and the top floor will consist of a three bedroom residential apartment. To service the building it is proposed to construct a basement level car parking area with 7 leased car parks and bike storage area accessed from Brougham Street. The ground floor provides a pedestrian connection from Brougham Street through the building and to the buildings eastern façade which adjoins public land owned by the New Plymouth District council (NPDC) adjacent to the Huatoki River.



Figure 1: Artistic Impression of Proposed Building

22. With regard to the neighbouring land which the proposed building extends into the applicant will be required to apply for a boundary adjustment and enter into a sale and purchase agreement prior to the construction of the building to facilitate this. Without the certainty. If consent is granted suitable conditions of consent will address this matter.

23. The building is proposed to be a maximum height of 25.5 metres high. Resource consent is required as the ODP restricts height to a maximum of 14 metres at the location. Resource Consent is also required under both the Operative and Proposed District Plan for the removal of a notable tree within the neighbouring site to the east owned by NPDC.
24. Operationally, the building consists of 7 levels (including the basement carpark) these are described as follows;
- Level 0 – 54m² (more or less) for 7 covered private parks (leasehold) and a bike storage area;
 - Level 1 – 436m² (more or less) split between two future office tenancies;
 - Levels 2 to 5 – 450m² on each floor (more or less) split between two future office tenancies; and
 - Level 6 – a three bedroom residential apartment (approximately 216m²)
 - Each of the above element is illustrated on the plans provided with the applicants AEE.
25. As described, each level will accommodate two office tenancies with exception to the top floor residential apartment and the basement car park. The basement car park will be accessed from Brougham Street for both entry and exit. Pedestrian access to the building is proposed from two ground floor locations, one at the corner of Powderham and Brougham Street and the remaining from the Council owned land to the northeast. Both accesses are linked through the building by an internal pedestrian thoroughfare. The entry near the corner Powderham and Brougham Street is covered by a veranda over Brougham Street and the second entry opens on to and interrelates with the adjoining Huatoki River margins. This entry point also includes a canopy and stairwell within land currently owned by NPDC.
26. Across Brougham Street is a loading zone which will service the building with regard to any deliveries. The 30kph speed limit compliments such an arrangement making Brougham Street easy to cross in a safe and efficient manner.
27. Bathroom and showering facilities are provided on each level. This is currently showing as three bathrooms and one shower for levels 1 to 5.
28. There is bin and recycling area within the basement.
29. A bicycle storage area is shown on the plans within the basement car park, it has not been described by the applicant how many bikes this is able to accommodate.
30. To facilitate the development, the Halamoana sculpture would need to be re-located to a new location which is yet to be determined.
31. The building proposed is intended to be constructed of locally sourced timber with design elements which promote low environmental impacts, maximisation of energy efficiencies and integrates a cultural narrative guided by consultation with Ngāti Te Whiti hapū and the Cultural Impact Assessment prepared by Ngāti Te Whiti hapū. The external appearance of the building consists almost entirely of glass facades with

tinted glazing and cultural motifs. Other design elements include an in stepping of the top floor to reduce visual dominance and a vertical timber screening of the external staircase.

32. A more detailed description of the proposal is provided within the applicants AEE and supporting information, the AEE includes various illustrations of the building as part of the drawings provided. These include engineering drawings, floor plans, architectural drawings, shading predictions, elevations and visual simulations of the building at the proposed location to facilitate landscape impact assessments.

Design Statement and Façade Treatment

33. The building sits on a relatively small site with respect to floor area, which has partly influenced the height of the building which the applicant advises is necessary to achieve an economically viable outcome. As such this results in an imposing building due to how significantly over height building is proposed. The imposing nature of the building has led to the applicant developing a building design which attempts to reduce effects associated with the bulk and scale of the building through having almost entirely glass façade features which maintain a high level of visual permeability. All four sides of the building consists of glass with exception the wooden external stairwell on the sites north eastern elevation.
34. The glass treatment is described within BOON's design statement that it will create a "lightness" and promote visual connection into and out of the building. Glass fritting and motif treatments are proposed to promote permeability, reduce reflection through appropriate glazing/fritting, control appropriate heat intake and provide a cultural narrative. The cultural narrative helps to acknowledge the cultural significance of the area which is discussed in further detail within the cultural effects section of this report.
35. The top floor apartment is stepped back from the edges of the building in an attempt to reduce the visual scale of the building. The remaining lower floors have are uniform and entirely glassed, visual permeability is sought to be achieved to allow for visibility of the building internal timber structural components.
36. The structural elements of the building are to compose of locally sourced timber. The glass façade design has also been designed to allow for building users and/or those passing by to appreciate the "sustainable" wooden construction features of the building which contribute to making it unique.
37. Further descriptions are included within the BOON design statement appended to the applicants AEE.

Site Preparation and Earthworks

38. Earthworks will be required to form the building foundations and the basement carpark. There is an estimated total earthworks volumes of approximately 650m³. As part of the site preparation works a notable tree will require removal and there will likely be damage to a segment of the historic New Plymouth railway stonewall which runs adjacent to the Huatoki Stream. A pre-cautionary archaeological authority has been applied for from Heritage New Zealand Pouhere Taonga (HNZ). The Huatoki River is approximately 10m away from the eastern boundary of the land parcels owned by K.D. Holdings Limited. Earthworks will be required within 10 metres of the river and will likely extend in to the adjoining land owned by NPDC.

APPLICANTS ASSESSMENT OF EFFECTS AND ADDITIONAL INFORMATION RESPONSES

39. The applicant has provided an assessment of effects of the activity on the environment (AEE). The AEE provided is supported by several technical reports including the following:

- Arboricultural Assessment;
- Archeological Assessment;
- Memorandum – Potential Soil Contamination;
- Geotechnical Interpretive Report;
- Architectural Design Statement;
- Landscape Visual Impact Assessment (subsequent to Section 92 Request);
- A Cultural Impact Assessment prepared by Ngāti Te Whiti hapū (subsequent to Section 92 Request); and
- Consultation records.

40. Through the Section 92 process significant and material changes were made to the overall proposal. Particularly with regard to design elements, greater recognition of and connection to the Huatoki Stream Corridor and greater recognition of cultural effects. Given the extent of changes the applicant provided a revised AEE dated 04/09/2020. The revised AEE has been consolidated with all amended and additional supporting documents including the LVIA and CIA mentioned above. The previous AEE dated 09/04/2020 is included with the information being made available as part of the public notification process, however the previous AEE has been clearly labelled as “superseded”.

41. The applicant’s updated AEE (Rev 2 – 04/09/2020) provides for an overall summary of the actual and potential effects as a result of the development and concludes that actual and potential adverse effects on the wider environment can be appropriately mitigated such that adverse effects would be acceptable. However it is acknowledged by the applicant that the adverse effects of the proposal on the Victoria Road view shaft will be more than minor.

42. In reaching this conclusion discussion is provided within the AEE and the section 92 responses of which is supported by the various documents described above. The AEE

provided has included an assessment of the actual and potential effects of the development on the following matters;

- Building bulk, scale and location;
- Impacts on view shafts and landscape effects;
- Impacts on character and amenity values of the area;
- Impacts on the notable tree and effects of its removal;
- Heritage and cultural effects;
- Parking, loading and traffic;
- Earthworks; and
- Positive effects.

43. I have assessed the application under Section 88 of the Resource Management Act 1991 (RMA) and have determined that the application is complete. It is noted that subsequent information was requested by Council under Section 92 and a response has now been supplied by the applicant in full. Subsequent to the Section 92 request a collaborative workshop/wānanga with the applicant, NPDC, Te Atiawa and Ngāti Te Whiti hapū representatives was held in order to better consider actual and potential cultural impacts associated with the development on the surrounding area and the Huatoki Stream. Following the wānanga a CIA was issued by Ngāti Te Whiti hapū to address and comment on cultural effects.

44. Overall the application in conjunction with the additional information supplied by the applicant contains sufficient information to allow for an assessment of effects as required for notification.

REQUIREMENT FOR OTHER CONSENTS

45. Resource consent from the Taranaki Regional Council (TRC) may be required for the removal of groundwater for dewatering of the site during earthworks depending on the final engineering design and if water is encountered. However it is considered that the requirement for such consent does not affect the assessment and determination of this resource consent application as it cannot be determined if consent is or is not required at this stage. Further there is little benefit for the applicant obtaining such a consent without the certainty of a land use consent.

46. Lease approvals required for the building encroachments into the NPDC-owned adjoining the property to the north-east (Lot 2 DP 15492).

STATUTORY PROVISIONS AND ACTIVITY STATUS

Operative District Plan

47. The New Plymouth District Plan (District Plan) became operative on the 15th of August 2005. The subject site is within the Business A Environment Area and is subject to several District Plan map overlays including the Section 2 Cameron Street Viewshaft, Section 2 Victoria Street Viewshaft, Section 4 Marsland Hill Viewshaft, Height Management Area C, Height Management Area B and a Notable Tree (ID 97).

Brougham Street is classified as Local Road and Powderham Street is classified as State Highway. An extract from the ODP planning map C24A and C24B is provided in Figure 2 and 3 below.

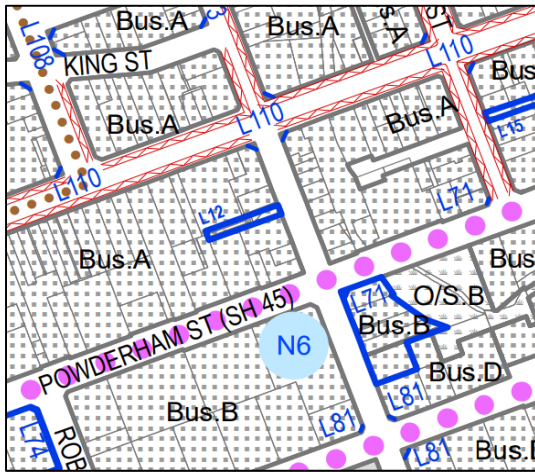


Figure 2 – Map C24A Zone

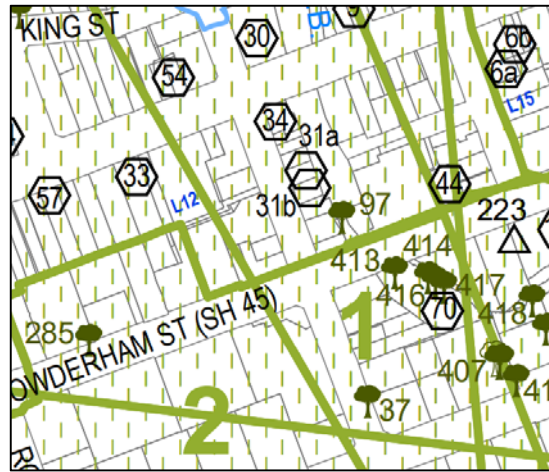


Figure 3 – Map C24B overlays

48. The proposal does not comply with the following **Operative District Plan** rules:

Rule Bus 12 – specifies a 14m maximum height limit for the location. The proposal cannot meet the permitted conditions of this rule because the building height is a maximum of 25.5m. This is a **restricted discretionary** activity.

Rule Bus 58 – specifies that earthworks volumes shall not exceed 322m³. The proposed earthworks volumes are approximately 650m³. This is a **restricted discretionary** activity.

Rule Bus 87 – specifies the quantity and design standards for car parks to be provided. The site is exempt from being required to provide parks, however not all of the parks proposed comply with design standards (i.e. width and depth). This is a **restricted discretionary** activity.

Rule Bus 88 – specifies the loading and standing space requirements. No designated loading or standing space has been proposed by the applicant. This is a **restricted discretionary** activity.

Rule Bus 90 – specifies the onsite maneuvering requirements. Maneuvering space is provided, however the proposed maneuvering space does not comply with relevant design standards. This is a **restricted discretionary** activity.

Rule OL 50 – Removal of a notable tree which has not been deemed as unsafe or unsound in health. This is a **restricted discretionary** activity.

Rule OL 63 – Maximum height of a building within the Cameron Street viewshaft specifies a 14m maximum height. The proposal cannot meet the permitted

conditions of this rule because the building height is a maximum of 25.5m. This is a **restricted discretionary** activity.

Rule OL 71 – Maximum height of a building within the Marsland Hill viewshaft specifies a 14m maximum height. The proposal cannot meet the permitted conditions of this rule because the building height is a maximum of 25.5m. This is a **restricted discretionary** activity.

Rule OL 75 – Maximum height of a building within the Victoria Road viewshaft specifies a 14m maximum height. The proposal cannot meet the permitted conditions of this rule because the building height is a maximum of 25.5m. This is a **restricted discretionary** activity.

Proposed District Plan

49. The proposed District Plan (PDP) was publicly notified on 23 January 2019. The application made by K.D. Holdings Limited was made following this date and therefore rules with immediate legal effect apply to the proposal in accordance with Section 88A and 104(1)(b) of the RMA. Rules with legal effect include those relating to rules which protect water, air, soil or if the rule protects areas of significant indigenous vegetation, significant habitats of indigenous fauna or historic heritage

50. Under the PDP planning maps the site is subject to the following overlays;

- Section 2 Cameron Street Viewshaft;
- Section 2 Victoria Street Viewshaft,
- Section 4 Marsland Hill Viewshaft,
- Height Management Area C,
- Heritage Character Area (where the development extends into the neighboring council owned land);
- Defined pedestrian frontage; and
- Notable Tree (ID 97).

51. The site carries a "City Centre Zone" Zoning, an extract illustrating the site zoning and relevant overlays are illustrated in Figure 4 below, an extract from the Councils PDP planning maps.



Figure 4: Proposed District Plan Zoning

52. The proposal does not comply with the following **Proposed District Plan** rules which have legal effect and are to be treated as operative in accordance with sections 86A to 86G of the RMA.

Rule TREE-R10 – Removal of a notable tree which has not been deemed as unsafe or unsound in health. This is a **non-complying** activity.

53. The proposal has a **restricted discretionary activity** status under the Operative District Plan Provisions and a **non-complying activity** under the relevant rules of the Proposed District Plan which have legal affect.

Overall Activity Status

54. Given the proposal has more than one activity status under the District Plan, and the activities are inseparable, the principle of bundling the applications overall activity status applies. Therefore the proposal shall be considered applying most onerous activity status and assessed using the more stringent assessment criteria. The proposal is therefore considered to be a **non-complying activity**.

55. However it is worth noting that the proposal would otherwise be considered as a restricted discretionary activity in relation to non-compliances associated with height rules. It is only the proposal to remove the notable tree that results in an overall activity status as a non-complying activity. Therefore there are components of the Assessment of Effects which can rely on the relevant matters restricted discretion as a guide. However an overall assessment as a non-complying activity including consideration to the gateway test is still necessary.

Relevant National Environmental Standards

56. Regulations 5(4)(5)&(6) of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS.) describes subdivision, change of land use and disturbing soil as activities to which the NES-CS applies. However, only where an activity that can be found on the Ministry for the Environment Hazardous Activities and Industries List (HAIL) has occurred and the site is considered to be a "piece of land" under the NES-CS. Therefore, under Section 5 of the NES-CS. it is necessary to determine whether the site is "a piece of land" under the requirements of the NES SOIL and to determine whether further investigation is required and/or consents under the NES-CS.

57. A memorandum assessing the likelihood for soil contamination to be present was supplied with the application and was undertaken by a suitably qualified environmental practitioner (SQEP). It was concluded that for the following reasons that the proposal does not require further consideration under the NES-CS.

- The site has no record of any activity included on the Hazardous Industries and Activities List (HAIL) having occurred on or more likely to have occurred on the site.
- The site is not included on the Taranaki Regional Council's register of selected land uses for contaminated site.

NOTIFICATION DECISION

58. The Council as consent authority must follow the steps set out in the section below, in the to determine whether to publicly notify an application for a resource consent (s95A(1)).

PUBLIC NOTIFICATION ASSESSMENT

Step 1: mandatory public notification in certain circumstances

59. The application must be publicly notified if it meets any of the criteria below:

95A Public notification of consent applications

Step 1: mandatory public notification in certain circumstances

(1) A consent authority must follow the steps set out in this section, in the order given, to determine whether to publicly notify an application for a resource consent.

(2) Determine whether the application meets any of the criteria set out in subsection (3) and,—

- a) if the answer is yes, publicly notify the application; and
- b) if the answer is no, go to step 2.

(3) The criteria for step 1 are as follows:

- a) **the applicant has requested the application be publicly notified;**
- b) public notification is required under s95C (lack of further information);
- c) the application is made jointly with an application to exchange recreation reserve land (s15AA Reserves Act 1977).

60. The applicant has requested the application be publicly notified. Confirmation was received from the applicant's consultant's BTW Company Limited by email on the 25th of June 2020.

61. It was agreed with the applicant that before public notification could occur that the applicant's Landscape and Visual Assessment (LVIA) and Cultural Impact Assessment, which was requested by Council as part of the Section 92 request process, would need to be available at the time of the application being publicly notified. The LVIA and CIA has been completed and now forms part of the overall document set.

62. The applicant has responded to all further information requests and has attended a collaborative wānanga with the involvement of the Applicant, Iwi, Hapu and NPDC. The wānanga served to help better understand the potential cultural effects/impacts of the development and particularly in relation with the site's proximity to the Huatoki Stream and general surrounding cultural significance of the area.

63. Therefore, the application must be publicly notified pursuant to section 95A(3)(a) of the RMA

SUBMISSIONS

64. The conclusions in the notification report were based on the required assessment under section 95A of the RMA and do not predetermine any conclusions that may be made under section 104 of the RMA in regard to considering the actual and potential effects on the environment of allowing the activity.

65. The application was publicly notified in the Taranaki Daily News on 12 September 2020 and available on the Council's website from that date until the close of submissions. Submissions closed at 5pm on 09 October 2020. The Council served notice of the resource consent application having regard to section 2AA of the RMA, to those

persons prescribed under section 10 of Resource Management (Forms, Fees, and Procedure) Regulations 2003.

66. At the close of submissions, 9 submissions had been received by the Council; four in general opposition, one neutral and seeking specific conditions if consent is granted (Powerco), and 4 in general support. All submissions provided some degree of reasoning as to their support or opposition.

67. The submissions received are summarised below. A full list of submitters (including the submissions) is also available on the Council website.

Table 1 – Summary of Matters Raised in Submissions

No#	Name	Submission Points Raised	Status of Submission
1	Junnare Pushkar	<ul style="list-style-type: none"> • Building will be a boost for local business and a needed project for NP to survive during a post COVID recession. • Green building – good blend of heritage and sustainable buildings. 	<ul style="list-style-type: none"> • Support • Does not wish to be heard.
2	Terry Boon	<ul style="list-style-type: none"> • Tree would compromise any development on the site • Proposal balances effects on view shafts through appropriate design mitigation • Sustainable timber construction and high building design setting a benchmark • Economic benefits of mixed-use development. • Facilitate visual and physical connection to the Huatoki – public and pedestrian benefits. • Cultural context and story the proposal promotes with respect to tangata whenua historical and spiritual connections to the area. Good consultation undertaken for a positive outcome from a cultural perspective. • Provision of a landmark building and facilitate the opening of the Huatoki Awa. 	<ul style="list-style-type: none"> • Support • Wishes to be heard
3	Ngāti te Whiti Hapū & Kotahitanga o te Atiawa Trust	<ul style="list-style-type: none"> • Ngati Te Whiti Hapu believe application has the potential to result in positive effects with respects to the relationship that Ngati Whiti and Te Ati Awa has with the site including their cultural traditions with ancestral lands, water, sites, waahi tapu and other taonga • Supports in part subject to the conditions suggested within the CIA. 	<ul style="list-style-type: none"> • Support (conditional) • Wishes to be heard
4	FENZ	<ul style="list-style-type: none"> • Seeks condition that building shall be connected to a water supply system that complies with the NZ Fire Service Code of Practice. 	<ul style="list-style-type: none"> • Neutral • Wishes to be heard
5	Nicholas Collins	<ul style="list-style-type: none"> • Opposes the building height exceeding the ODP by 12 metres. • Oppose impact on the 3 viewshafts, they are important to community amenity. • Oppose removal of protected trees. • Oppose the effects on the heritage character area. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard

6	Valerie Winifred	<ul style="list-style-type: none"> • Opposes height exceedance. • Impact on viewshafts – views from highpoints are an asset to the city and should be protected – especially views to the sea. • Refers to Perry Dimes building as an example. 	<ul style="list-style-type: none"> • Oppose • Does not Wish to be heard
7	June Mosely	<ul style="list-style-type: none"> • Building height exceeding the ODP by 11.5 metres • Height of the building will adversely impact on 3 protected viewshafts and effect public amenity. • Oppose removal of protected trees. • Out of character with the heritage character area – heritage buildings will be overlooked and shadowed / overwhelmed by the building which doesn't not adhere to the PDP Building Design Guidelines. • Pedestrian Safety will be compromised by the one vehicular entry and exit from Brougham St. Turning vehicles will increase traffic congestion and there is a lack of suitable loading zones to service the buildings and none on the same side of the street as the building. • Car parking – the 13 parks are narrow and don't sufficiently provide for the scale of the development. The lack of space will cause safety issues for pedestrians and visitors. • Highway safety – 6 level glass building on the main highway will cause a visual distraction increasing safety issues for pedestrians crossing the street. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
9	Anne Sanderson	<ul style="list-style-type: none"> • Building height exceeding the ODP and PDP • Height of the building will adversely impact on 3 protected viewshafts from both seaward and landward sides and effect public amenity / values of views linking land to sea. • Oppose removal of protected trees. The removal will also damage the stonewall • Out of character with the heritage character area – heritage buildings will be overlooked and shadowed / the building in no way aligns with the PDP Building Design Guidelines. The proposal is contrary to the Building Design Guidelines. • Oppose the application due to the shading that will be cast over the Victor Davies Park and adversely affect public amenity values of that area. 	<ul style="list-style-type: none"> • Oppose • Wishes to be heard
9	Powerco	<ul style="list-style-type: none"> • Conditional support based on confirmation of where existing lines are prior to earthworks being undertaken. • Include a suitable condition of consent to ensure accurate location of existing underground network utilities prior to earthworks. 	Submission Withdrawn – based on agreed condition – Correspondence attached at Appendix A

Table 1: Summary of Submission Points

Assessment of Environmental Effects

Approach

68. My approach to undertaking the assessment of effects is to identify each of the relevant topics and then assess each in turn under a series of subheadings (where they are relevant). The first subheading aims to provide context, the following will identify whether any relevant submission points were raised by submitters in relation to that topic and finally I will make an overall assessment with reference to any relevant provisions of relevant planning documents (in particular the Proposed and Operative District Plans) that might provide guidance to the assessment. An objective and policies assessment is made separately under later paragraphs. Consideration of expert opinions will be made where such information is available. When required for mitigation, consent conditions, if consent were to be granted, are also commented on.

69. The following sections of this report assesses the actual and potential effects on the environment anticipated from the proposed resource consent application and includes the matters identified under the following bullet points:

- Landscape and visual effects;
- Viewshaft effects;
- Cultural effects;
- Archaeological effects;
- Built Heritage / Character;
- Construction and earthworks Effects;
- Soil Contamination;
- Traffic & Transport;
- Loading and Parking; and
- Positive effects.

Landscape & Visual Amenity Effects

70. The proposal is for a 25.5 metre tall building within a 14 metre height area (ODP) and 17 metre height area under the (PDP). Therefore, the building is 11.5 metres over height under the ODP as the rules within the PDP do not yet have legal effect. Under the ODP applications for over height buildings carry a Restricted Discretionary Activity status, this is also the case under the PDP in its current draft form. This indicates to me that the direction of the District Plan is not to prohibit tall buildings in the CBD environment all together, but instead the District Plan provides opportunity for taller buildings but only where appropriate, and with consideration to a refined set of assessment criteria designed to protect landscape and visual amenity effects while also providing opportunity to consider wider social, cultural and economic impacts. I believe the activity status reflects the expectation that a proposals should be assessed based on their own merits and any site specific attributes including building design, location and any mitigation or offsetting proposed to manage adverse effects.

71. If treated in isolation from the proposal to remove the notable tree, the application would be for a Restricted Discretionary Activity. Therefore, I believe it is appropriate to consider the restricted discretionary assessment criteria in the ODP and PDP when assessing the effects of the proposal. In doing so I do not wish to take away from the fact that the bundling approach is being applied and that the proposal must still be considered as a non-complying activity as a whole. However, the assessment criteria below provides for a helpful guide in assessing landscape and visual amenity effects. In my opinion the consideration of landscape and visual amenity effects forms one of, if not the most pertinent effect on the environment and community for consideration.

ODP Assessment Criteria

72. ODP – Assessment Criteria (BUS 12)

- 1) *The extent to which the extra HEIGHT of the proposed BUILDING will:*
 - *adversely affect the character and visual amenity of the surrounding area;*
 - *have an overbearing effect on SITES within the RESIDENTIAL ENVIRONMENT AREA;*
 - *adversely affect OUTSTANDING and REGIONALLY SIGNIFICANT LANDSCAPES;*
 - *intrude into and/or block an URBAN VIEWSHAFT (see section 3 of the planning maps); and*
 - *adversely affect the natural character of the coastal environment or PRIORITY WATERBODIES.*
- 2) *The extent to which SITE layout, separation distances, topography, planting or setbacks can mitigate the adverse effects of extra HEIGHT.*

...

73. ODP – Assessment Criteria (OL63, OL71 and OL75)

- 1) *The extent of intrusion of the additional HEIGHT of the STRUCTURE into the viewshaft, and the elements of the view affected (see section 3 of the planning maps).*
- 2) *The extent to which the core of the view is impinged upon by the additional HEIGHT of the STRUCTURE (refer to "view details" in section 3 of the planning maps).*
- 3) *Whether the STRUCTURE results in the removal of existing intrusions or increases the quality of the view.*
- 4) *Whether the additional HEIGHT of the STRUCTURE will frame the view.*
- 5) *The proximity of the STRUCTURE to the inside edge of the viewshaft.*

...

74. PDP – Assessment Criteria (CCZ-R7)

- 1) *The extent and effect of non-compliance with any City Centre Zone Effects Standards and any relevant matters of discretion in the infringed Effect Standard(s).*
- 2) *The extent to which the scale and intensity of the activity may adversely impact on the character and amenity of the City Centre.*
- 3) *Whether any adverse effects can be avoided, or appropriately remedied or mitigated*

75. The AEE provides a comprehensive description of the site and the surrounding environment. This is supported by the LVIA completed by Mr. McEwan of BOON Architects (BOON) which provides a description of the site and surrounding environment but with a greater landscape and visual amenity context. The LVIA also provides a description of the visual catchment including various public and private receptors, both receptors in close proximity to the site and those which would view the site from further afield. Distant views of the building would be prevalent which is largely due to New Plymouth's geographic topography, but also due to the proposed building height. The LVIA conducted by BOON adopts an approach which provides an overall assessment of the various landscape and visual amenity effects but also provides an assessment of the "visual absorption capability" (VAC) of each viewpoint. The VAC assessment is a six-point scale designed to consider the ability of the existing landscape to absorb the level of change/effect resultant of the building proposed.

76. Based on the findings of the LVIA provided by the applicant and Richard Bain's independent peer reviews appended to this report at Appendix B, I have come to the following conclusions regarding landscape and visual amenity effects. In reaching the conclusions, I have considered mitigation proposed by the applicant and have also considered any anticipated positive effects to achieve an overall balanced final assessment.

Cameron Street Viewshaft

77. The assessment criteria within the overlays chapter provides for the protection of public viewshafts. I agree with the findings of BOON's LVIA and Mr. Bains peer reviews which state effects on the Cameron Road Viewshaft are less than minor. The building will not be highly visible within this viewshaft.

78. As part of BOON's LVIA a series of visual simulations are provided to facilitate the assessment of effects. The simulations have greatly helped with the assessment of the Cameron Street viewshaft as the simulations illustrate that the building will not be visible within the viewshaft and therefore further consideration is not necessary.

Marsden Hill / Pūkākā Pa Viewshaft

79. The Marsden hill view shaft is identified as being a pedestrian audience looking in a northern direction toward the proposed development site. I have visited the viewshaft on multiple occasions and note that the views from the viewshaft are interrupted by mature trees. There is a window between two large trees, and as detailed within the BOON LVIA, which provides a clear view of the subject site. The view in this direction

is in my opinion condensed by the effect of the trees as opposed to a view that is open and sparse. The location of the subject site is relatively in close proximity to the viewing platform at approximately 245 metres away from the site and standing at an RL of 47. The site is at approximately RL-11, this gives the effect of looking down on the building as opposed to in line of sight or looking up to the building. In my opinion this allows for the building to be absorbed into the existing built fabric of the city, of which is also described within the BOON LVIA utilising the VAC assessment methodology. The proposed building blocks the view of existing buildings, but the buildings are considered to be of a generally low aesthetic value including the City Centre Mall car park building. I do note the proposed building will block a heritage building on the eastern side of Devon Street. In looking at the top floor car park of Central City Mall building within the BOON simulations, the building will block an indiscernible amount of sea view from this view point. Overall, I agree with the assessment by BOON that existing built form will absorb the building and that adverse effects on the viewshaft will be minor.

80. With respect to the Marsden Hill viewshaft I believe it is relevant to make comment against the CIA which is further considered within the cultural effects assessment. Pūkākā Pa (Marsden Hill) is site of significance to Te Atiawa Iwi and Ngāti te Whiti hapū. Given the cultural narratives tied to this development, and as detailed within the CIA, it is considered that the proposed building will have an acceptable effect on any cultural associations with the view shaft. I do not elaborate on this further here but do within my cultural effects assessment later.
81. Overall the effects of the building proposed will have what I consider a minor effects on the Marsden Hill/ Pūkākā Pa viewshaft and is therefore acceptable.

Victoria Road Viewshaft

82. The Victoria Road viewshaft has both a pedestrian and vehicle audience. The view appears when travelling or walking along Victoria Road from the east to the west. In my opinion the view is short lived when traveling by vehicle, but greater appreciation can be made when walking. The view is accentuated by the picture framing effect that the road embankment, existing dwellings on the southern side of Victoria Road and surrounding vegetation has. As described in the District Plan, the Len Lye wind wand is an integral part of the viewshaft and in a central location. Other tall buildings within the view include the Council owned parking building and items of communications infrastructure. There are also clear views of the sea and horizon. I consider the key elements of the view are the sea, horizon and the wind wand.
83. The effects of the proposed 25.5 metre tall building on the viewshaft within the BOON LVIA and Mr. Bain's peer review have been assessed as "moderate". In the context of the RMA this equates to a more than minor effect. The BOON LVIA does not provide commentary on the Visual Absorption Capacity (VAC) for the Victoria Street viewshaft as has been described for others, it would be good to understand this better when assessing the effects. The building is clearly a dominant feature in the view and will result in notable change to the view. The BOON LVIA states that;

"The overheight portion of the proposed building infringes only small portion of sea view directly to the left of the Wind Wand"

Mr. Bain in his reviews concurs.

84. With respect to the sea view I believe this is to a degree understated in the BOON LVIA. However I do agree that the impact on the wind wand is minor and agree with the LVIA's final summary that the overall effect on the viewshaft is more than minor. However, It is also my opinion that attributes of the view shaft contribute to this assessment through a picture framing effect and the significant portion of the sea view which is currently lost due to overhanging Pohutakawa trees. Trees I would anticipate require trimming to maintain road function. The trimming of the trees may create more expansive sea views and therefore have the potential to limit the overall effect that the building is having on the viewshaft as currently shown. I also note that, and despite the impact on the sea view being greater than "small", there is still expansive views of the sea between the top of the building and the horizon. Due to the distance of the building from the viewing points, I feel there is little opportunity to appreciate the aesthetic features of the building and they should therefore not be considered as having a potential offsetting effect on the overall impact on the viewshaft.
85. Overall, I concur with the conclusions of both the BOON LVIA and Mr. Bain's peer reviews, which state that the effects on the Victoria Road viewshaft are more than minor. However, I also believe that the effects are significantly accentuated by elements such as the overhanging trees reducing the sea views and the picture framing effect of the viewshaft. I consider that the overall effect is on the lower end of the more than minor spectrum. I believe there may still be opportunity for the applicant to investigate alternative designs to address this effect.
86. I also agree with Mr. Bain's comments that if the proposal were a single floor lower (retaining a similar the top floor design), that the effects on the viewshaft would be minor and therefore acceptable. Particularly when balanced against the positive effects such as the establishment of a high-quality building in the CBD, positive economic effects, promoting vibrancy and achieving the City Centre's core functional roles and strategies.

Landscape Amenity Effects of Notable Tree Removal

87. Tree ID 97 (Agonis Flexuosa), which is proposed to be removed is considered to contribute positively to the amenity values of the area in its current form. However, I also note that the current amenity values of the site and the neighboring Council owned land which includes the tree are in my opinion low. With exception to the tree and the railway embankment the site carries little in the way of any positive amenity. Should a building which is of a permitted height be within the site it will likely block the entire view of the tree from where it is most visible, travelling north east along Powderham Street and from the Marsden Hill look out. Although a permitted baseline for the proposal has not been applied, I believe it is still helpful in understanding effects and what weight should be given to the amenity effects associated with the removal of the tree. Strictly from an amenity perspective I believe that the removal of

the tree would have a less than minor effect, but only on the basis of the proposed proceeding (or one similar). I say this because without the provision of a well-designed and functioning building the removal of the tree would be detrimental to the amenity values of the area which I already consider to be low.

88. I believe the positive effects which the proposed building is likely to outweigh the adverse effects of removing of the tree. However greater consideration to this is given within the effects assessment associated with the notable tree removal as the above only considers landscape amenity effects associated with the removal of the tree.

Shading Effects

89. The applicant has provided a series of illustrations demonstrating the shading effects associated with the building proposed. The illustrations also identify the shading effects of a building which would be permitted. The diagrams provided includes both an assessment of winter and summer solstice effects. Comment is also provided within the applicants AEE, LVIA and Richard Bain’s peer reviews. All assessments concur that the effects associated with shading, and particularly compared to the effects associated with a complying building height, would be less than minor in nature.

90. As part of the notification assessment surrounding properties were identified and notified. I note none of these landowners made a submission in opposition. One submission was raised relating to shading over Victor Davies Park – in reviewing the shading plans this effect is minimal given at 4pm during the winter solstice when shading effects on the park would be at their worst there is no shading effect on the park. At later times in the afternoon shading will already be impacting the area due to surrounding existing buildings as the sun would be exceptionally low in the sky and soon setting at around 5:10pm.

91. In reviewing the shading diagrams provided and assessing the effects of the building compared to the shading effects associated with existing buildings I consider that the potential adverse effects will be less than minor in nature. Shading is an effect anticipated as even a 14 metre building would shade across a road in the wintertime. Further, during the summertime shade can be consider as a positive as temperatures increase and sunlight is in abundance, making an assessment of effects more subjective rather than factual.

92. As no submissions from the notified persons were received, and based on the advice received from the applicant’s and Councils Landscape Architects, I consider that any potential adverse shading effects would be less than minor in nature.

Submission Points Relating to Landscape/Visual Amenity Effects, Viewshafts Effects and Shading

Nicholas Collins	<ul style="list-style-type: none">• Oppose impact on the 3 viewshafts, they are important to community amenity.• Oppose removal of protected trees.
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Valerie Winifred	<ul style="list-style-type: none"> • Impact on viewshafts – views from highpoints are an asset to the city and should be protected – especially views to the sea.
June Mosely	<ul style="list-style-type: none"> • Building height exceeding the ODP by 11.5 metres • Height of the building will adversely impact on 3 protected viewshafts and effect public amenity. • Oppose removal of protected trees. • Out of character with the heritage character area – heritage buildings will be overlooked and shadowed / overwhelmed by the building which doesn't not adhere to the PDP Building Design Guidelines.
Anne Sanderson	<ul style="list-style-type: none"> • Building height exceeding the ODP and PDP. • Height of the building will adversely impact on 3 protected viewshafts from both seaward and landward sides and effect public amenity / values of views linking land to sea. • Oppose removal of protected trees. • Out of character with the heritage character area – heritage buildings will be overlooked and shadowed / the building in no way aligns with the PDP Building Design Guidelines. The proposal is contrary to the Building Design Guidelines. • Oppose the application due to the shading that will be cast over the Victor Davies Park and adversely affect public amenity values of that area.

Table 2: Landscape and Visual Amenity Submission Points

Summary of Landscape and Visual Amenity Effects

93. I consider there is a place for tall buildings within the CBD. However, consideration of the effects a tall building is likely to have on amenity values, particularly those associated with viewshafts requires careful consideration. Extensive assessment has been made by Mr. McEwan and Mr. Bain within their supporting information. Both experts have concluded that the effects of the proposal are acceptable from an RMA perspective (effects minor or less than minor), with exception to the impact on the Victoria Street viewshaft. Given their combined experience and based on my assessments I am obliged to concur with this position.

94. Overall, I consider that the proposal goes toward significantly reducing the effects of the development through proposing a building design which mitigates adverse effects on visual and landscape amenity values. Further, measures may also be incorporated into consent conditions to mitigate effects further and as detailed within Mr. McEwan's LVIA. However, there is little in the way of any firm confirmation as to what is specifically proposed to be included to mitigate effects and I encourage the applicant to confirm what is to be included as mitigation within their evidence. Currently, I believe effects on landscape amenity are at levels which are more than minor. This particularly apparent within surrounding street views, i.e. viewpoints G and K within Boon's visual simulations. I also believe that the effects on the Victoria Street viewshaft from the development are also more than minor. I believe the effects on the Victoria Street viewshaft would be more difficult to mitigate given the distances and VAC of the viewshaft.

95. In summary, the building is uniform in shape (with exception to the top floor), I believe this creates a bulk and dominance effect and I encourage the applicant to give further consideration to design features in addressing the visual effects. Otherwise, and as

recommended by Mr. Bain, for the applicant to give further consideration to the viability a 5 storey building. Currently the effects of the building from landscape and visual amenity perspective are more than minor.

I also agree with Mr. Bain's comments that if the proposal were a single floor lower (retaining a similar the top floor design), that the effects on the viewshaft would be minor and therefore acceptable. Particularly when balanced against the positive effects such as the establishment of a high-quality building in the CBD, positive economic effects, promoting vibrancy and achieving the City Centre's core functional roles and strategies.

96. I do also believe that there are good urban design elements associated with the building, and these may wish to be explored further by the applicant to give confidence as to how the design will mitigate effects. I believe the visual permeability of the structure and the potential to see and appreciate the structural timber elements creates something that could be aesthetically pleasing and contributes positively to how the building is viewed. I therefore encourage the applicant to address this further, including detail as to how this permeability is going to be realised. I have included draft conditions which aim to address the matter of permeability, but how will it be measured and how certainty can be achieved.

Cultural Effects

97. The applicant's AEE includes a detailed assessment of the cultural effects. The assessments provided within the AEE are based on the findings of a comprehensive Cultural Impact Assessment (CIA) undertaken by Ngāti te Whiti hapū. There are no Wāhi Taonga or Sites of Significance to Maori (SASM) identified within the NPDC's operative or proposed district planning maps within the site. However, it is accepted that the area carries a special and significant importance to Ngāti te Whiti hapū and Te Atiawa Iwi for the various reasons presented in the CIA. Namely the area was known as "Mawhera", and as detailed in the CIA an important place for papakainga, mahinga kai gathering and many other activities along the Huatoki. The Huatoki River traverses closely past the site, the Huatoki is identified as a Significant Waterbody and has a strong cultural importance to Ngāti te Whiti hapū and Te Atiawa Iwi further attributing to the cultural significance of the area.
98. Ngāti te Whiti have expressed within the CIA an understanding of NPDC's core objective to ensure the CBD is a vibrant business centre, which inherently requires a built form of a high density. Ngāti te Whiti does not wish to limit this objective but alternatively ensure a cultural narrative is provide for within the CBD recognising the cultural significance of the area. The building design proposed by the applicant has been influenced by consultation carried out with Ngāti te Whiti hapū and Te Atiawa Iwi. An initial design concept included little to no cultural narrative. However, subsequent consultation led to significant changes providing for a strong multi layered cultural narrative. The proposal for consideration incudes design features which tell a story of the cultural significance of the area achieved through the proposal to include of following design elements;
- Window treatments (fritting/glazing) with a cultural reference;

- Cultural patterning on the stairwell representing the significance of Titoki trees once in abundance along the banks of the Huatoki;
- Patterning that represents hīnaki on the ground floor connection from Brougham Street through the building and toward the Huatoki river; and
- A mauri stone representation/water feature at the eastern boundary of the site.

99. In addition to the design elements described above the applicant has agreed to adopt the conditions requested by Ngāti te Whiti as described within the CIA. The conditions requested are considered to mitigate actual and potential cultural effects by providing for a cultural narrative and ensuring ongoing consultation as part of a Kaitiake Forum.
100. Based on the information within the CIA the site, surrounding location and more broadly the entire CBD has a significant cultural and historical significance to tangata whenua, which I believe that through the collaborative approach and direct involvement with iwi and hapu during the preliminary design phase and eventually the detailed design phases that a strong cultural narrative will come through in the design. Conditions of consent are proposed by the applicant to ensure the design features described above, or similar through future design forums, are implemented. The applicant has agreed to enter a "Kaitiake Forum". The forum is designed to facilitate ongoing consultation with Iwi and Hapu. The forum will act as a reference group throughout the development's life span to allow for cultural Advice to be made available. Such a condition enables Ngati Te Whiti's ability to exercise kaitiakitanga.

Submissions Relating to Cultural Effects

101. Submission by Terry Boon acknowledges that;

"The impressive CIA prepared by Ngāti te Whiti hapū contains a wealth of information stating that the importance of the environment and relationship of historical and spiritual connection the tangata whenua have to place. The applicant has undertaken close consultation with Ngāti te Whiti hapū resulting in the building design introducing features underpinned by cultural context." ...

102. Submission by Ngāti Whiti hapū supported by their CIA. Ngāti te Whiti hapū in summary to their submission state that the proposal (in its current form) has the potential to result in positive cultural effects. Ngāti te Whiti hapū's submission is in support subject to the provision of the conditions requested within the CIA being secured by NPDC in the event of the consent being granted.
103. No other submission points relate to cultural effects.

Conclusion on Cultural Effects Assessment

104. The proposal does not trigger the requirement for consent under any Operative or Proposed District Plan rules relating to "Waahi Taonga or SASMs". However, and as described in detail above, the site is of significance to Ngāti te Whiti hapū. Two submissions were received relating to cultural matters, both in support. Ngāti Whiti hapū provided conditional support on the basis that the conditions proposed within

the CIA are adopted by the applicant. The applicant has agreed to adopt the conditions within the CIA. As conditional support has been provided, and that no rules relating to cultural matters have been triggered, a specific assessment against the Operative and Proposed District Plan criteria for assessing applications triggering rules relating to cultural matters is not necessary.

105. Overall, and through the inclusion of suitable consent conditions, it is considered that any actual and potential cultural effects are mitigated to be less than minor levels, and in several aspects, will have a positive effects. Positives effects are elaborated on in a subsequent section of this report.

Archeological Effects

106. The applicant's AEE includes an assessment of the archeological context of the site with reference to an Archeological Assessment carried out by Ivan Bruce and Hamish Crimp and included as Appendix F to the AEE. The archaeological assessment details relevant archaeological context including the presence of the 1875 railway embankment which will be damaged if the notable tree and its roots are removed, which is proposed by the applicant. The assessment also details the Maori occupation associated with the area which is more accurately and intensely detailed within the CIA. The assessment indicates significant pre 1900 activity and therefore the potential that Maori and/or European archeological features might be encountered. However, the site has also been subject to significant site modification and therefore any pre 1900 items are likely to have already been destroyed or modified. This includes the destruction of a pre-1900 building once located on the site which was lost during a fire in 1885. The replacement buildings were also demolished in 1906-07 and further subsequent buildings were later demolished. Most recently the site has not accommodated any buildings but has instead simply been used as a gravel car park.
107. The site is highly modified and it is described as unlikely that any previously undiscovered archeology will be encountered during site works. This is clearly described throughout the archaeological assessment provided by the applicant of which its conclusions are supported by Dan McCurdy, Archaeologist at Geometria, who provided a peer review on behalf of NPDC.
108. The removal of the notable tree, including its trunk and roots, of which would be required to facilitate the development, will adversely affect the stonewall railway embankment. This section of the stone wall is one of many remnant sections of the wall. Some of which are unrecorded. This section is one of the few sections that survive within the CBD, however longer and better presented sections exist in close proximity, namely the section within the Victor Davies Park. Being in reserve land this section of wall is subject to little risk of damage from future development and will likely remain on display in perpetuity. Further this site is listed as a heritage feature unlike the wall adjacent to the site which is of a lesser size, quality and extent, the archeological assessment describes the section adjacent to the subject site as having low – medium heritage values. The stone wall is of little interest to tangata whenua.

109. An Archeological Authority has been applied for by the applicant to damage the stone wall to facilitate the removal of the tree. The removal of the stone wall is supported by the applicant's archaeological assessment and Council's expert, Mr. McCurdy concurs with these findings.

Submissions Received Relating to Archeological Effects

110. Anne Sanderson – In association with opposition towards the removal of the notable tree the submission states that the tree removal will adversely affect the pre 1900 railway embankment.

Conclusions on Archeological Effects

111. Overall, I consider that the effects of the partial damage or removal of this section of wall will have a minor effect and will overall be acceptable. The reasons behind this opinion include that the wall limits the development of the site in accordance with its underlying zoning, the low-medium value of this section of wall and presence of larger sections of the same stonewall which are better presented and protected. My opinion has been formed based on the archeological assessment provided by the applicant and the expert advice prepared by Mr. McCurdy. Mr. McCurdy's peer review is included in Appendix C of this report.

Heritage Character

112. The applicant's original AEE and Rev 2 AEE dated 04/09/2020 provided little in the way of a specific assessment of the proposed buildings likely impact on surrounding heritage buildings. I note the building is not located within the "heritage character area", as defined in the PDP, but does adjoin and encroach into it where in the neighbouring NPDC land. Further there are also three heritage buildings within immediate proximity of the site. Given the bulk and scale of the building I believe it is appropriate that suitable consideration is given to the potential impact on these buildings given their heritage protection status. The LVIA provided by the applicant also insufficiently addressed the matter.
113. Following the close of submissions, it was requested that further assessment regarding the heritage building matters be provided from a suitably qualified individual. This was because the AEE and LVIA failed to provide sufficient detail and I believe it is a question worth exploring given the importance of heritage buildings and the amenity values they provide the community. The applicant engaged Clive Cullen to undertake a statement regarding effects on the heritage character area. Clive Cullen is a qualified and registered architect with NZIA membership. Clive Cullen lives in the Taranaki Region and has significant experience including heritage restoration and conservation work.
114. Clive Cullen's statement provides specific consideration to the proposal's likely impact on the surrounding heritage buildings and heritage character area described in the PDP. The statement also provides comment against the City and Town Centre Design Guide, an appendix to the PDP and dated July 2019. The information provided is

helpful in developing a more informed understanding of the effects as it would naturally be easy to conclude the effects of such a large building would simply overwhelm the surrounding heritage buildings and therefore detract from their value. In Clive's opinion he indicates that the more modern and polarizing/juxtaposing a building has the potential to minimise impacts on nearby heritage. Further juxtaposing buildings can positively emphasise the heritage buildings character rather than overwhelm. Clive provides useful examples and images of this in referring to the Len Lye building and its relationship with the White Hart and the Govett Brewster Art Gallery buildings. Although such an assessment can be subjective, I accept this opinion and have personally experienced this in the west end precinct and in other cities. The building proposed is highly modern in its features. Therefore, and all though probably not to the extent which is experienced near the Len Lye, I believe this juxtaposition effect is likely to occur and it is relevant to apply this to the assessment if potential effects on H-31 (Area 41 restaurant & hair salon), H-110 (TAFT building) and H-133 (Salvation Army).

115. Mr. Cullen also details that the entirely glass facades will likely have a positive impact in mirroring the Salvation Army building across the road and refers to the Len Lye building as an example of this. It is difficult to fully understand the likelihood and extent of the mirroring, so reliance on this as mitigation is given less weight but is worthy of noting.

Submissions Received Relating to Heritage

116. **June Mosley** – States that the proposal is out of character with the heritage character area – heritage buildings will be overlooked, overshadowed and overwhelmed by the building which doesn't not adhere to the "Heritage Character Area" referenced in the PDP Building Design Guidelines.
117. **Anne Sanderson** - *"I oppose the application as its height of 25 metres is no way aligned with the "Heritage Character Area" Referenced extensively in the PDP Building Design Guide. The submission quotes page 8 of the PDP Design Guide.*

"The City and Town Centre Design Guide helps to ensure that new development in the heritage character area does not compromise the individual value of the heritage buildings or the integrity of the precincts street scape and setting"

118. **Nicholas Collins** – *"I oppose the effect on the heritage character area."*
119. I believe that the commentary in Mr. Cullen's statement suitably addresses the matters raised within the above submission points and it was largely the above submission points which resulted in my concerns and RFI request on the matter.
120. I do still agree that the height is still an adversely contributing factor towards overwhelming the nearby heritage character buildings. However, it is the modern features of the building which mitigates the likely impacts on nearby and neighboring heritage buildings and the Heritage Character Area. I believe that the contrast between the buildings accentuate the heritage features of these buildings stand out.

However, in saying this a height detractor would still mitigate effects but it would still be desirable to maintain the modern features of the building to keep this contrasting effect.

Conclusion of Effects on Heritage Character

121. It is evident that the proposal will result in an impact on the surrounding heritage buildings. After giving careful consideration to Mr. Cullen's assessment and after visiting the west end precinct as an example, I have come to the conclusion that the proposal will have a minor effect on the current built heritage in the area including the three nearby heritage buildings. I also agree that there is the potential for the juxtaposition between new/modern and old to result in positive heritage effects. In saying this it is not the height of the building that achieves this potentially positive effect but the design, which is modern and almost entirely made of glass features.
122. For the reasons outlined above I consider the effects on built heritage to be no more than minor. Conditions of consent regarding the façade treatment and cultural narratives, and as already discussed in earlier sections of this report, should be incorporated if consent is granted to ensure suitable mitigation is achieved.

Removal of Notable Tree

123. As consent is required for the removal of the Notable Tree under rules within both the Operative and Proposed District Plan an assessment of effects under each is necessary and provided as follows.

Operative District Plan Assessment

124. Under the ODP the proposal to remove a notable tree carries a Restricted Discretionary Activity Status. Therefore, the matters of restricted discretion are provided below, matters relevant to this proposal are highlighted in bold. As a restricted discretionary activity, I consider it appropriate to base my assessment of effects on the matters of restricted discretion relevant to the proposal.

1) Whether the NOTABLE TREE is causing or likely to cause serious damage to STRUCTURES, persons or services.

125. I do not consider that the tree is causing or likely to cause any serious damage to structures, persons or services and its removal cannot be supported on this basis.

2) The extent to which the NOTABLE TREE is causing any hardship or nuisance and whether this can be mitigated by means other than removal.

126. It is in my opinion that item 2 above is the critical assessment criteria matter relevant to the proposal. The ODP was developed over 15 years ago and in my view the wording is not entirely helpful. Particularly as there is no definition provided within the ODP for "hardship" or "nuisance", nor is there within the RMA. Therefore, there

is little guidance as to how to apply this to a development scenario. I refer to the following definitions summarised from the Collins Dictionary.

"Hardship – conditions of life difficult to endure or something that causes suffering or privation (loss of necessities for life – i.e. starvation)."

127. The Collins Dictionary definition of hardship is in my opinion irrelevant to this proposal.

"Nuisance – A person or thing that causes annoyance or bother. Something that is obnoxious or injurious to the community or an individual, especially in relation to his ownership of property. A cause of irritation or difficulties."

128. The concept of nuisance is somewhat more applicable and useful in formulating an opinion. In respect to my assessment of effects I believe the idea of nuisance relates to the ability of the applicant to use the site for an activity anticipated by the site's zoning. Being a commercial activity there is inherently an economic assessment which the applicant must consider in order to determine whether or not development is viable. Section 4.3.1 of the applicants AEE provides an in-depth assessment of alternative design methods which may result in the preservation of the tree. This is supported by engineering advice. The outcome of these assessments were that the economic viability of retaining the tree would make the development of the site fiscally unfeasible. Given the small footprint of the site I agree that the preservation of the tree will likely add significant economic constraints. It has been described that even a shallow excavation would more than likely impact on the tree to an extent which would be deemed as "detrimental" to its health. This presents what I would interpret as a "nuisance". However it is also important to note this nuisance is only on a the current landowner and the tree does still provide wider amenity values which have the opportunity to be appreciated by the public without experiencing any nuisance.

3) Whether a replacement TREE or TREES can be established and maintained in an appropriate location on the SITE.

129. The species is not of particular botanical rarity nor is it a species indigenous to New Zealand. Prior to the construction of the New Plymouth to Waitara Railway line the banks of the Huatoki River where subject to a prevalence of Titoki trees. Given the trees location and the land adjoining, it will likely be subject to future planting and public reserve features given Council's longer term strategic intentions for the area. However little in the way of any specific mitigation has been proposed by the applicant other than the retention of two Kentia Palms, of which their value, health and desire to protect may be questionable. Further as these trees are not located within land owned by the applicant this shouldn't be consider as mitigation.

4) Any alternative method or locations available to the APPLICANT for carrying out the works.

130. Exploration into alternative building designs have been undertaken by the applicant, however these have all been determined as unviable. The AEE draws on supporting engineering advice from RedJacket and Tonkin and Taylor and also advice from

Asplundh regarding the tree and its roots system which includes "anchoring roots" within the subject site. Based on the information available it appears difficult to develop the site with a foundation that preserves the tree while also creating a development that is commercially and economically viable. In reference to a Council commissioned report titled "Investigation into the New Plymouth Central Area and Building Heights", undertaken in 2014, it is detailed that economic viability is perhaps the single biggest driver for large scale / tall developments in any CBD location and therefore one of the biggest barriers. Introducing an additional challenge, cost or constraint such as catering for a notable tree therefore presents considerable risk and financial exposure. In this instance it is exemplified by the small GFA available to the applicant. Alternative methods have been investigated and may be technically viable. However, based on the information made available by the applicant, and in conjunction with a general understanding of the costs and challenges associated with the development of larger inner city construction projects, I agree with applicant's assessment that integrating the tree into the design and achieving an economically viable solution would result in significant challenges and risks.

5) The condition of the NOTABLE TREE.

131. I agree that the tree is in good condition and its removal cannot be supported on this basis alone.

6) The value (as assessed under New Plymouth District Council Notable Tree Evaluation method) of the NOTABLE TREE.

132. Further consideration to item 6 above is provide within my overall conclusion under paragraph 129 which provides for a summary of the trees value under the Council's Notable Tree Evaluation method.

7) The ecological impact on a group of TREES of removing one or more specimens.

N/A

8) Whether the NOTABLE TREE is located within a New Plymouth entrance corridor.

N/A

9) The extent to which the removal or destruction is necessary to preserve or maintain the operating efficiency of any public work or NETWORK UTILITIES or the safety and efficiency of a road.

N/A

Submissions Received Relating to the Removal of the Notable Tree

133. The following submissions included points relating to the proposal to remove the notable tree.

- Terry Boon – States that the tree would compromise any development on the site.
- Anne Sanderson – Opposition towards the removal of the notable tree and states that the tree removal will adversely affect the pre 1900 railway embankment.
- Nicholas Collins – Opposes removal of protected trees.
- June Mosley – I oppose the removal of the protected tree on the grounds that it is designated “protected” and its removal will affect a heritage site (stone railway embankment).

Conclusion on Effects of the Removal of the Notable Tree - Operative District Plan Assessment

134. Based on the findings of both the Asplundh Report and Mr. Paice’s (NPDC Arborist) technical report, included in Appendix D, the tree is clearly considered to be healthy and structurally sound. However, there is contention between Mr. MacDonald and Mr. Paice on opinions regarding the tree’s likely life expectation. Within the further information provided on the 20th of January 2021. Mr. MacDonald provides further detail on the tree’s life expectancy to validate his previous conclusion of a 20-year life expectancy. Reference is also made to the Council’s Notable Tree Report which rates the tree with a life expectancy score of 1, the lowest score that can be given out of 4. I have provided the following bullet points to elaborate on the scoring approach. A copy of the NPDC notable tree report is included as Appendix E to this report.
- Q1 – Is the tree a good species, each score is rated out of 4 with potential total of 20. DP 97 Agonis Flexuosa score 13/20
 - Q2 – Does the tree have visual/landscape value, each score is rated out of 4 and then multiplied by 2 to give a potential total score of 24. DP 97 Agonis Flexuosa score 22/24
 - Q3 – Does the tree have heritage value? Each score is rated out of 5 and then multiplied by 2 to give a potential total score out of 24. DP 97 Agonis Flexuosa score 8/24
 - Q4 – Does the tree have botanical/rarity value? Each score is rated out of 4 and then multiplied by 3 to give a potential total score out of 24. DP 97 Agonis Flexuosa score 12/24.
 - Q5 – Is the tree manageable in its location? Each score is rated out of 5 with a potential total score out of 4. DP 97 Agonis Flexuosa score 2/04
 - Q6 – Not applicable
 - For a tree to qualify as a category 2 notable tree a total score of at least 54 must be achieved - DP Item 97 (Agonis Flexuosa) has a total score of 57.
135. Overall, the tree only just achieves status as a category 2 notable tree and the tree scores highest under Q1 (is the tree a good species) and Q2 (Does the tree have visual/landscape value).

136. In assessing the effects, I believe it is also relevant to consider a more detailed assessment of the values notable trees provide to the community. These include visual amenity and landscape value, heritage and/or cultural value and botanical rarity. Each item is assessed under the following sub-headings.

Visual Amenity and Landscape Effects

137. Mr. Paice has provided comment on Mr. MacDonald's advice on the health and vigor of the tree but with little comment on likely effects on amenity. Mr. MacDonald has provided an assessment of effects on amenity and concludes that the tree contributes greatly to the community and CBD aesthetics. Mr. MacDonald's view on this is that "the tree softens and screens an otherwise unsightly building and surrounds". I agree that the area, with exception to the tree is of a low amenity value. This is also reflective of the description made within BTW's AEE and Mr. Bains most recent LVIA peer review. Therefore, the tree contributes positively to the amenity of the area and without the tree amenity values would be further detracted. However, I note that a bulk of the foliage (up to 50%) is described as being from up to three neighbouring self-seeded Agonis Flexuosas and therefore not protected.
138. Mr. Bain has provided comment regarding the landscape and amenity values attributed to the tree. In my opinion I believe the advice from Mr. Bain is of greater relevance as the arboricultural advice is in my opinion more useful in assessing matters such as tree health, tree form/structure, tree life span and botanical value. Mr Bain has concluded in his Revision A Landscape assessment that the trees amenity value would be significantly impacted by a building which would be permitted under the ODPs height requirements. I note trigger for consent would still be required for enabling works, such as earthworks under the dripline of a notable tree, however I believe that given the sites underlying zoning (business) it would be unfair and unreasonable to restrict the landowner, or any future landowners ability, to reasonably develop the site. In summary, Mr. Bain is of the opinion that;

"Any development on the site would likely reduce the tree's visibility and therefore reduce its contribution to the amenity of the area. As a landscape element, the tree has an unusual shaped trunk that gives every impression of it being compromised by its position by a stone wall. This reduces its presence as a stand-alone specimen tree in its urban context, and provides little amenity to the Huatoki Stream"

Heritage and/or cultural Effects

139. The tree has not been identified as having significant heritage or cultural significance. This is evident within both the advice provided by Mr. MacDonald and Mr. Paice as it is not known who planted the tree. The NPDC Notable Tree Report is also consistent with this summary giving the tree a rating of 1 for historic heritage and 1 for cultural heritage. 1 is the lowest rating in a 4 point scale. For the reasons specified above I believe the effects on the removal of the notable tree would result in a less than minor effect on the cultural or heritage values associated with the notable tree.

Botanical Rarity

140. The tree has not been identified as having significant botanical value nor is it rare or native. This is evident within both the advice provided by Mr. MacDonald and the Council's heritage tree report which gives the tree a rating of 2 out of 4 for "botanical value" and a 2 out of 4 for "occurrence of the species". Mr MacDonald has also identified several other trees of the same species within the District within the "Additional Arboricultural Evidence, Agonis Flexuosa" provided to BTW on 16 November 2020. However, these trees are not of notable status. For the reasons specified above I believe the effects on the removal of the notable tree would result in only minor effects on botanical rarity.

Conclusion on Assessment of Effects under the ODP

141. In my opinion I consider that the objectives and policies provide for there to be the opportunity to remove a notable tree where it is limiting the development of site in accordance with its underlying zoning. In formulating a decision as to whether it is appropriate to remove a tree to facilitate development, I believe it is important that the effects of removing the tree are considered in conjunction with the "nuisance" deemed to be created by the tree from a development perspective. Therefore, an overall loss of value which the tree provides can be compared against the potential positive effects associated with its removal in facilitating development in accordance with the underlying zoning. I concur that the tree is healthy, however there appears to be a question mark around the tree's longevity. Whether this should limit its removal should be treated with caution as there are several matters out of Council's control which might impact on the tree's life span, for example disease, structure failure or weather events. The Notable Tree Report scores the tree low with a total rating of 57 out of 107 with 54 the cut off to be considered as notable.
142. Weighing up all of the information above I have come to the conclusion that when taking a balancing approach that the effects of the removal of the tree will be minor and therefore acceptable under the ODP.

Proposed District Plan Assessment

143. Under the PDP the removal of a notable tree carries a Non-Complying Activity Status, unlike the Restricted Discretionary Activity Status under the ODP. The change in activity status indicates the value placed on notable trees within the District. However, the PDP objectives and policies framework provides for in what I believe a more robust platform in making a planning assessment when compared to the objectives and policies listed under the relevant sections of the ODP. I believe the objectives and policies help to facilitate the considerations made within this assessment of effects. A full assessment against the relevant objectives and policies is included in Table 3. However, I believe Tree P5 is of paramount relevance as it relates to activities which include the removal or destruction of a notable tree.

TREE-P5 - Avoid the removal, partial removal or destruction of a scheduled notable tree, unless:

- 1) it is necessary to prevent a serious threat to people or property;
- 2) it is necessary to enable the ongoing provision of essential infrastructure;
- 3) it is necessary to ensure compliance with the Electricity (Hazards from Trees) Regulations 2003; and/or
- 4) the tree is rendering the site incapable of reasonable use.**

144. Based on the findings presented in the reports undertaken by Mr. MacDonald and Mr. Paice it is evident that the proposal cannot be supported on the basis items 1, 2, or 3 under TREE-P5. Item 4 indicates that there is scope for Council to accept the removal or partial destruction of a notable tree where it is rendering a site "incapable of reasonable use".

Submissions Received Relating to the Removal of the Notable Tree

145. The following submissions included points relating to the proposal to remove the notable tree.

- Terry Boon – States that the tree would compromise any development on the site.
- Anne Sanderson – Opposition towards the removal of the notable tree and states that the tree removal will adversely affect the pre 1900 railway embankment.
- Nicholas Collins – Opposes removal of protected trees.
- June Mosley – I oppose the removal of the protected tree on the grounds that it is designated "protected" and its removal will affect a heritage site (stone railway embankment).

146. The submission period resulted in eight submissions in total, including four in opposition. Three of those in opposition raised the matter of the tree. One submission in support noting the manner in which the tree would likely compromise any development of the site. I consider that the quantity of the submissions received, which is low in my opinion, reflects the public sentiment towards the tree. I would expect that a proposal to remove a notable tree of greater value in the public's perception would result in a significant number of opposing submissions. In saying this, it should not be taken away from the fact that this tree, as with all notable trees in the district, is of significant value to heritage and amenity values and the proposal to remove the tree should be considered with great caution.

Conclusion on Notable Tree Removal Effects

147. In my opinion I believe that the tree has low overall value in the context of notable trees in the district. I have visited the site on number of occasions and note the following;

- Approximately 50% of the foliage in the area is not from the protected tree but from self-seeded trees of the same spaces.
- The most impactful component of the tree is the thick trunk, however this is hidden by the stone wall and located in an area which I would describe as of low amenity.
- The tree's life span is an area of contention between Mr. MacDonald and Mr. Paice, I believe this indicates the difficulty in being able to determine any accurate lifespan.
- Development of any scale on the subject site would likely adversely affect the trees health; and
- Only three submissions were received which opposed the removal of a notable tree.

148. In conclusion I believe that the overall effects of removing the notable tree would be minor when weighing up all of the information received from Mr. MacDonald, Mr. Paice and Mr. Bain. It is my opinion that NPDC Policy Tree P5 (4) in the PDP facilitates a proposal where a tree of notable value may be removed if it is "rendering a site incapable of reasonable use". I believe the loss of the tree ID 97 is mitigated by the fact that the Tree ID 97's overall value is low on the scale of notability under the NPDC Notable Trees Report - DP Item 97. I also believe the effects are mitigated by the likely positive effects on the amenity value in the location and the way the building addresses with the Huatoki.

Traffic & Transport

149. The applicants AEE has not provided a specific assessment against transport related effects. However, the applicant has engaged with Waka Kotahi (NZTA). In reviewing the application, NZTA concluded that the impact on the state highway would be less than minor in nature provided that no future access will be allowed from the state highway (Powderham Street). No vehicle access is proposed on to the state highway and this therefore addressed the concerns of the NZTA and effects on them are anticipated to be at a level which is less than minor in level.

150. As described within the proposal section entry and exit to and from the building's basement car park is from Brougham Street via a single crossing. Brougham Street is a local road with 30kph speed limit. NPDC has sought that the proposed basement car park function and access arrangements be considered by Andy Skerrett of AMTANZ. Despite compliance with the relevant transport rules listed within the Business Chapter of the District Plan being achieved, Mr. Skerrett has provided traffic comments. In terms of traffic generation (included in Appendix F), it is considered that due to the limited number of parks (7) that the proposal will likely result in traffic movements which are less than what is currently being experienced with 17 parks. Further, the reliance of vehicles and therefore provision of car parks in the CBD is to a degree discouraged by the National Policy Statement for Urban Development 2020. The site is also within the Council's car park exemption area.

151. Loading is available in the Brougham Street road reserve and this is considered to be a typical way of servicing central city office blocks in the district. The 30kph speed

limit ensures it is a safe environment for individuals servicing the development to cross the road.

152. The initial car park layout provided for up to 13 parks. The original design was questioned by NPDC as to its ability to efficiently function, this was asked to be clarified as part of a further RFI following the close of submissions. In response the applicant has reconfigured the car park and has significantly reduced the number of parks to be provided from 13 to 7. The proposed parking layout is now workable and provides for a "bike storage" area.
153. I note that cycling is encouraged and therefore end of trip facilities are a necessity within new inner-city developments. The applicant's site plans identify an area for bike parking however little detail is provided as to the number of bikes this facility would likely accommodate. Shower and changing room facilities are also illustrated on site plans at one shower per floor.

Submissions Received Relating to Transport and Parking

154. The following submissions included points relating transport and parking related matters.
- June Mosley – States the 13 parks are narrow and don't sufficiently provide for the scale of the development. The lack of space will cause safety issues for pedestrians and visitors.
 - Highway safety – 6 level glass building on the main highway will cause a visual distraction increasing safety issues for pedestrians crossing the street.

Conclusion on Transport Related Effects

155. It is my view that as the applicant has engaged NZTA, and as the NZTA have provided their approval to support the development that the effects on the state highway are acceptable. NZTA acknowledge that the glass façade will not introduce any glare effects which could not be reasonably dealt with, Mr. Skerrett agrees with this opinion and refers to other recent glass clad buildings.
156. Regarding parking and function the revised parking layout confirms that the parking layout will be functional and will therefore not result in safety issues including conflict within the parking area or vehicles over spilling onto Brougham Street. Overall, and based on the advice sought from Mr. Skerrett, it is considered that any effects associated with transport related matters including parking and loading will be minor in nature.

Construction and Earthworks

157. The AEE includes a section on "site development and earthworks" but not construction effects. With regard to earthworks, it has not been confirmed by the applicant whether consent would be required from Taranaki Regional Council. However, I consider that it is not considered necessary to obtain an earthworks consent prior to obtaining land use consent (if required) as the earthworks necessary would be similar to that anticipated with the development of the site in accordance with its underlying zoning. Further, such an approach is considered acceptable given the detailed design and additional consenting costs required to obtain earthworks consent (if required) when the applicant does not yet have sufficient certainty that the consent will be granted given the risks associated with the Land Use Consent proposal being a non-complying activity.
158. The applicant has noted that all earthworks will be undertaken in accordance with the most up to date TRC accepted earthworks and sediment control requirements. Further, an erosion and sediment control plan (ESCP) will be required as part of the conditions to manage any potential effects associated with the earthworks likely to be required on site including the management of dust, stormwater discharges and tracking of material off site. In addition a condition requiring a Traffic Management Plan will be sought if consent were to be granted.
159. There were no submissions received relating to construction effects.

Conclusions on Construction Earthworks Effects

160. With regard to construction effects, it is anticipated that the applicant will be required to meet the noise standards set out for construction activities within the CBD. Further a construction management and traffic management plan will form part of the conditions of consent and will be required to mitigate any potential effects associated with construction effects. With respect to demolition the site is currently bare and therefore demolition is not required. Overall, any effects associated with construction can be appropriately managed to minor levels through the implementation of suitable consent conditions.
161. There were no submissions received relating to construction effects.

Soil Contamination Effects

162. Effects on the environment and persons associated with potential soil contamination are managed by the NESCS 2011. The application includes a memorandum undertaken by a suitably qualified person (SQEP) on the potential for there to be soil contamination present on site. As summarised within the memorandum provided by the applicant the site is not included on the HAIL list nor is there any evidence of there being activities previously occurring on the site which may have resulted in the potential for there to be contamination. Therefore the proposal is not subject to the NESCS 2011 and any actual or potential effects associated with the potential for there to be land contamination will be less than minor in nature.

163. There were no submissions received relating to land contamination matters.

Positive Effects

164. The Huatoki River where it passes through the CBD toward the coast is subject to a heavily built environment. Little regard has been given to the Huatoki River and its inherent cultural and natural values. Therefore, the river was subject to what I would now describe as an inappropriate built form which fails to celebrate the presence of the waterbody or its natural, cultural, amenity or recreational values. This proposal provides for greater recognition of the river, provides for the opportunity to develop a positive interface with the river and acknowledges its presence while celebrating natural and cultural values associated with the river and its margins.
165. Currently there is no passive surveillance within the NPDC land which adjoins the river. I consider that the proposal, of which the building addresses the interface with the council owned land and the margins of the Huatoki River, that passive surveillance and an overall general increased amenity and future urban design opportunities would greatly improve the appreciation of the area.
166. The development has the potential to provide a landmark building for the district located within the CBD and at a prominent site. The development also likely to provide further opportunities and benefits for the CBD such as the daylighting of the Huatoki River and the re-development of the Metroplaza area. This intention has been secured for the future by Council purchasing the Metroplaza site which currently has buildings built out over the stream. Conceptual work is being developed through the Central City Strategy (currently in progress) to define the over-arching principles associated with that key transformational moves within the city, including this location. The intention for this area will be to have a restored and enhanced green link along the Huatoki through the city to the sea with associated public access. Details are to be determined in partnership with iwi, hāpu and landowners. However I note that the proposed design contributes positively to the strategic direction described above.
167. Large scale development within the CBD can be significantly challenging when compared to Greenfield development. This is due to a number of contributing factors including but not limited to;
- Cost of land within the CBD
 - Regulatory costs of developing within the CBD
 - Requirement to get sufficient height to achieve economic viability; and
 - Requirement to find keystone tenants

It is considered that the proposal could encourage and promote business activity within the CBD at a time of which city fringe hubs are becoming a serious threat to the CBD's function as the key location for business and s a landmark building. However, it is considered that the proposal in its current form seeks to establish a building of a high quality on a number of aspects including;

- A sustainable timber design.
- A cultural narrative addressing the significance of the area to tangata whenua
- A modern building with aesthetically pleasing architectural features; and
- A high functioning building with regard to sustainability and efficiency.

168. The applicant argues that the proposal will likely become, if consent was to be granted a positive building feature within the CBD and will set the standard for subsequent building. It is difficult to be certain as to how the building would be viewed by the public in the future and as to whether it becomes “iconic” in positive way, particularly as this to degree can be subjective as with any architectural feature. However, I do agree that the building is of a modern design and promotes aesthetically pleasing architectural features including permeable glass facades, tukutuku patterned staircase, a dynamic top floor and a fritted cultural narrative. A condition of consent would therefore be required to ensure a continued consultation arrangement between Iwi/Hapu and the developer so that such elements of design are not lost or reduced during the detailed design phase.
169. The proposed connection through the centre of the building is a public asset and will improve general connectivity in the area and specifically connectivity from Brougham Street to the Huatoki River. The walkway also contributes to the cultural narrative in representing an eel trap of which gives historical context to the Mahinga Kai attributes of this area to Ngāti te Whiti.
170. The building will bring business and workers to the city having a positive economic flow on effect on to surrounding retail stores, bars and cafes.
171. In an overall sense the proposal has the potential to contribute positively to the City Centre through greater cultural recognition of the area and Huatoki River, provision of connectivity to the river, contributing to the economic prosperity of the City Centre and district, provision of high-quality office space and through revitalising a City Centre block which has not been used for nothing beyond car parking for over 20 years.
172. Given the above assessment, and through Council suitably imposing the recommended conditions, I consider that effects on the environment relating to the following matters can be mitigated to the extent of being no more than minor;
- Effects on the surrounding road network;
 - Cultural effects;
 - Construction Effects;
 - Effects from the removal of the Notable Tree;
 - Effects on surrounding heritage buildings;
 - Effects on archaeology (stone railway embankment)
 - Effects on the Marsden Hill/Pukaka Pa and Cameron Street Viewshafts; and
 - Effects associated with potential soil contamination.

I also acknowledge the positive effects anticipated to result from the proposal, including those on

- Cultural values of Ngāti Te Whiti hapū;

- Connectivity;
- Enhancement of amenity values adjacent to the Huatoki River at this location;
- Provision of greater diversity amongst building stock;
- Economic effects; and
- Greater recognition of the Huatoki River.

173. There are other effects which may be able to be mitigated to an extent. However, there is still more than likely to be a level of adverse effect which cannot simply be mitigated, an example of this is the loss of the notable tree to enable the development.

174. In the case of general landscape amenity and viewshafts effects these have been assessed to be more than minor, but it is difficult to be definitive with the information available. In my opinion this includes general landscape and amenity effects associated with the bulk and scale of the building when viewed from various inner city and fringe city locations. Simply put, it is the question as to whether the building is too dominant for the proposed location. Another is the effect on the Victoria Street viewshaft which is assessed as more than minor effect and due to distance difficult to soften through building design mitigation (with exception to a reduction in height).

175. The information which I feel is lacking, and I encourage the applicant to expand on within evidence, includes greater detail regarding the visually permeability of glass elements of the building and how certainty of the idea of the building creating a "light" feel is to be achieved. Confirmation as to the mitigation being "proposed", as described by Mr. McEwan in his LVIA, including how the applicant intends to achieve the proposed mitigation measures. Particularly as planted measures along the eastern boundary are not in the applicants land. Further there is a strong indication within Mr. Bains advice that, and despite over height buildings having a place in the city centre where deemed appropriate, the proposal may simply be one storey to tall.

176. In summary it is in my opinion that the above assessment concludes that there are landscape and visual amenity effects and effects on the Victoria Street viewshaft that are unlikely to be able to be mitigated to minor levels without addressing the height. However, there may still be opportunity for the applicant to confirm otherwise within evidence.

177. The following sections of this report provides for assessment of the relevant statutory instruments and will help inform whether the proposal is able to be considered for approval under the objectives and policies limb of the Gateway Test.

National Regional and District Objectives and Policies Assessment
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Operative New Plymouth District Plan (ODP)

178. The following tables provides for an assessment of the relevant objectives and policies in the ODP and PDP. My assessments have been tableside with the relevant

objectives and policies listed in the left column and my comments and assessments provided in the right column. I have done this to make it easier for the reader to consider my comments against the relevant objectives and policies rather than referring to an appendix.

Table 3 – Relevant ODP Objectives and Policies Assessment

Relevant Objectives and Policies	Assessment
<p>Objective 1 - <i>To ensure activities do not adversely affect the environmental and amenity values of areas within the district or adversely affect existing activities.</i></p> <p>Policy 1.1 - <i>Activities should be located in areas where their effects are compatible with the character of the area.</i></p> <p>Policy 1.2 - <i>Activities within an area should not have adverse effects that diminish the amenity of neighbouring areas, having regard to the character of the receiving environment and cumulative effects.</i></p> <p>Policy 1.3 - <i>New activities that are sensitive to the elements that define the character of the area in which they intend to locate should be designed and/or located to avoid conflict.</i></p>	<p>I consider that Objective 1 and Policy 1.2 are particularly relevant to the proposal given the potential effects on amenity values and heritage character. I consider that the proposal will contribute to existing activities in the area, particularly by promoting a vibrant CBD through the establishment of high quality office space in a modern building with aesthetically pleasing features. It is my opinion that Objective 1 relates to the immediately surrounding area, given the purpose descriptions given for the Business Zone I consider that the proposal will contribute to the area.</p> <p>In on overall sense I consider that consistency with Objective 1 and the relevant underlying objectives is achieved.</p>
<p>Objective 2 - <i>To avoid, remedy or mitigate the adverse effects of light overspill and glare, noise, and the consumption of liquor on amenity values and health.</i></p> <p>Policy 2.2 - <i>Activities should not result in adverse effects on amenity values, community health and safety due to glare from artificial light, flaring or reflected light.</i></p>	<p>Consideration against Objective 2 is necessary due proposed glass features and potential for adverse effects associated with glare. There are no sensitive activities surrounding the development and the proposal to include conditions managing building glazing and fritting have been proposed. NZTA have provided their written approval and therefore effects considered to be acceptable.</p> <p>I believe consistency with Objective 2 and Policy 2.2 is achieved.</p>
<p>Objective 5 - <i>To maintain and enhance the character and coherence of the urban areas of the New Plymouth District.</i></p> <p>Policy 5.1 - <i>The importance of open space areas to the community and the values associated with these areas should be recognised and provided for.</i></p> <p>Policy 5.2 - <i>Buildings and structures should not detract from or reduce the visual amenity of the Urban Viewshafts.</i></p>	<p>Urban areas are made up of a variety of types including residential, industrial and business areas. Each carries different attributes but they also tie areas together where fringing each other.</p> <p>For the past 23 years the site has been a neglected gravel carpark. It is in my view that the proposal better aligns with Objective 5 when compared to the existing environment through the provision of enhancement of the urban area.</p>

<p>Policy 5.3 - <i>The positive contribution vegetation makes to urban amenity should be recognised, maintained and, where possible, enhanced.</i></p>	<p>However, underlying policies, namely Policy 5.2, provide more specific direction with regard to the protection of urban view shafts, which the building height effects. For the reasons discussed within my AEE, the applicants AEE, the applicants LVIA and Mr. Bain's peer reviews the proposal's encroachment into the Victoria street viewshafts results in a more than minor effect. However, this effect is on only one of the three viewshafts which the proposal triggers.</p> <p>Although view shafts are protected, it is my opinion that encroachments should be able to occur with appropriate consideration to the proposal overall. In my opinion views are ever changing and it is not the purpose objectives and policies to restrict changes to a viewshaft all together.</p> <p>For these reason, and with deliberation I believe that, and despite having an effect which is more than minor that the proposal is consistent with Objective 5 and the relevant underlying polices particularly given the modern and architecturally desirable features of the building mitigating potential adverse effects.</p>
<p>Objective 7 - <i>To ensure the attractive, vibrant, safe, efficient and convenient character of the business environment is maintained.</i></p> <p>Policy 7.1 - <i>Buildings, signs and other structures should be designed and/or located to avoid, remedy or mitigate adverse effects on the character and visual amenity of business areas.</i></p>	<p>Objective 7 seeks to promote a healthy thriving city centre and business zone. I consider that the proposal promotes Objective 7 and its underlying policies, where relevant, through the facilitation of revitalising what should be a prominent CBD site but has been neglected and used as an unsealed car park for 23 years.</p> <p>The building proposed is of contemporary design with architecturally pleasing features. These elements align to Policy 7.1. And the project overall aligns with Objective 7</p>
<p>Objective 11 - <i>To recognise the district's heritage resources, provide for their protection and promote their enhancement.</i></p> <p>Policy 11.1 - <i>Notable Trees should be protected from destruction or alteration which will adversely affect their significance or health,</i></p>	<p>As indicated under objective 11 it is clear that the idea of heritage is a wider reaching concept then one might initially assume. Under the operative plan, and as detailed under policies 11.1 to 11.5, heritage goes beyond just buildings or archaeology.</p>

<p><i>except where they pose a threat to property, people or services.</i></p> <p>Policy 11.2 - <i>The heritage values of BUILDINGS and items and their settings should be protected and where practicable enhanced.</i></p> <p>Policy 11.3 - <i>The special character of heritage character areas should be recognised and promoted</i></p> <p>Policy 11.4 - <i>The Huatoki Stream should be protected from enclosure by development within the New Plymouth CBD, and enhanced to promote its heritage significance.</i></p> <p>Policy 11.5 – <i>Archaeological Sites should be protected from destruction and alteration that will adversely affect their archaeological values.</i></p>	<p>Based on the conclusions presented within the assessment of effects sections above the proposal is consistent with Policy 11.2, 11.4 and 11.5.</p> <p>Policy 11.3 is disregarded as there are no “special heritage character areas identified within the Operative District Planning maps despite the wording above. The policy was carried over in error as the Heritage Character Areas got removed from the District Plan before being made operative.</p> <p>With respect to Policy 11.1 I consider that the proposal is not contrary to this policy given the way in which the tree renders the site incapable for reasonable use and therefore is adversely affecting the landowner and the property including its development potential and value.</p>
<p>Objective 13 - <i>To ensure that land use activities do not increase the likelihood or magnitude of natural hazard events.</i></p> <p>Policy 13.1 - <i>Subdivision, development and other land uses should not result in aggravation of natural hazards.</i></p>	<p>The proposal is consistent with Objective 13 and Policy 13.1. The site is not impacted by any natural hazard layers as identified by the planning maps. Proximity to the Huatoki River is noted but it is not considered that the proposal will increase the likelihood or magnitude of any natural hazard event such as flooding associated with the Huatoki River.</p>
<p>Objective 14 - <i>To preserve and enhance the natural character of the coastal environment, wetlands, and lakes and RIVERS and their margins. Policy</i></p> <p>Policy 14.2 - <i>The natural character of wetlands and RIVERS and lakes and their margins should not be adversely affected by inappropriate subdivision, use or development and should, where practicable, be restored and rehabilitated.</i></p>	<p>The CBD is an inherently built-up environment, the planning provisions allow for 100% site coverage.</p> <p>When the existing environment is compared against the positive outcomes which this proposal is anticipated to have with respects to the interface between the river and CBD buildings it is considered that the proposal is consistent with Objective 14 and Policy 14.2. I believe that the proposal will likely have an improving impact of the Huatoki River.</p>
<p>Objective 18 - <i>To maintain and enhance public access to and along the coast, lakes and rivers.</i></p> <p>Policy 18.1 - <i>Public access should be provided to and along the coast and Priority Waterbodies except where such access should be restricted;</i></p> <ul style="list-style-type: none"> • <i>To preserve natural character.</i> • <i>To protect Significant Coastal Areas.</i> • <i>To protect Significant Natural Areas.</i> 	<p>It is considered that the proposal will promote public access to the Huatoki. Currently there is access to the Huatoki but only through the Metro Plaza which is now rarely used. The general public are unlikely to be aware of this arrangement. The gate at the Powderham Street entrance is often locked. The proposal will likely act as a catalyst toward improving the interface with the Huatoki and as detailed within the CIA will help better recognise the cultural significance of the area.</p>

<ul style="list-style-type: none"> • <i>To safeguard ecological, intrinsic or recreational attributes.</i> • <i>To avoid conflicts between competing uses.</i> • <i>To protect cultural and spiritual values of Tangata Whenua.</i> • <i>To protect human health and safety.</i> • <i>For reasons of security.</i> • <i>To prevent aggravation of a natural hazard.</i> • <i>To protect the integrity of river and flood control works.</i> • <i>To provide for any other exceptional circumstances that are sufficient to justify the restriction, notwithstanding the national importance of maintaining access.</i> 	<p>Overall, for the above reasons, it is considered that the proposal is consistent with Objective 18 and the relevant bullet points identified under Policy 18.1.</p>
<p>Objective 19 - <i>To recognise and provide for the cultural and spiritual values of Tāngata Whenua in all aspects of resource management in the district in a manner which respects and accommodates Tikanga Maori.</i></p> <p>Policy 19.1 - <i>The use of land for traditional Maori activities should be recognised and provided for.</i></p> <p>Policy 19.2 - <i>Subdivision, land use or development should not adversely affect the relationship, culture or traditions that Tangata Whenua have with Waahi Taonga/ Sites Of Significance To Maori.</i></p> <p>Policy 19.3 - <i>The cultural and spiritual values of Tangata Whenua should be recognised and provided for in the resource management of the district.</i></p> <p>Policy 19.4 - <i>The principles of the Treaty Of Waitangi (Te Tiriti O Waitangi) will be taken into account in the management of the natural and physical resources of the district.</i></p>	<p>For the reasons discussed within the CIA, the applicant's AEE and my AEE I consider the proposal to be consistent with Objective 19 and the relevant underlying policies.</p>
<p>Objective 20 - <i>To ensure that the road transportation network will be able to operate safely and efficiently.</i></p> <p>Policy 20.1 - <i>The movement of traffic to and from a site should not adversely affect the safe and efficient movement of vehicles, both on-site, onto and along the road transportation network.</i></p> <p>Policy 20.2 - <i>The safe and efficient operation of the road transportation network should not be adversely affected by land use activities that</i></p>	<p>Andy Skerrett has provided comment regarding transport, parking and loading. Based on Mr Skerrett's conclusions and as NZTA have provided their written approval regarding any effects associated with the adjoining State Highway I consider that the proposal is not contrary to Objective 20 and the relevant underlying policies.</p>

<p><i>have insufficient or substandard parking or loading areas.</i></p> <p>Policy 20.3 - <i>Potential conflict between vehicles, pedestrians and cyclists moving on the road transportation network should be minimised to protect the safety and efficiency of road and footpath users.</i></p>	
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Summary of Objectives and Policies Assessment

179. I consider the proposal to be generally consistent with the relevant objectives and policies as set out above including those relating to the removal of the notable tree and protection of the district’s viewshafts. Viewshafts and landscape amenity are considered under Objective 5 and Policies 5.1 to 5.3. The assessment of effects finds that the effects on the Victoria Street viewshaft will be more than minor. However, I also believe that the ODP’s objectives and policies provide opportunity for a more holistic assessment of the proposal against the objectives and policies and therefore make a balanced assessment as to whether consistency with them is achieved. In this sense I believe that the proposal is consistent with the objectives and policies identified above.

Proposed District Plan

Table 3 – Relevant ODP Objectives and Policies Assessment

Strategic Objectives	
Relevant Objectives and Policies	Assessment
<p>Heritage Character</p> <p>HC-1 -<i>The district's heritage and cultural values contribute to the district's sense of place and identity, and are recognised and protected.</i></p> <p>HC-2 -<i>The cultural, spiritual and/or historical values associated with historic heritage and sites and areas of significance to Māori are protected.</i></p> <p>HC-3 -<i>Tangata whenua's relationships, interests and associations with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance are recognised and provided for</i></p>	<p>The heritage character objectives and policies protect both cultural and heritage values and makes specific reference to sites of significance to Maori. I believe for the reasons discussed within earlier sections that the proposal is consistent with HC-2 and HC-3.</p> <p>HC-1 has broader context. However, the proposal aligns with this objective through the provision of positive contributions toward identity. I believe the proposal provides opportunity to create a sense of place and identity by having a small but modern city centre and by addressing the Huatoki River.</p>
<p>Natural Environment</p> <p>NE-4 -<i>The district's natural environment contributes to our district's sense of place and identity and is recognised and provided for.</i></p>	<p>The proposal provides an opportunity to greater recognise the natural environment of the area by proposing a frontage with the Huatoki River that</p>

<p>NE-5 - <i>A well-functioning and resilient natural environment is sustained that provides for the social, economic and cultural well-being of communities and for the needs of future generations.</i></p> <p>NE-6 - <i>An integrated management approach is taken where land use activities impact on waterbodies and the coastal environment, in collaboration with government, councils and tangata whenua.</i></p> <p>NE-7 - <i>Tangata whenua are able to exercise their customary responsibilities as mana whenua and kaitiaki in the protection and management of the natural environment</i></p>	<p>defines a relationship with it through a cultural narrative.</p> <p>Currently the area is underutilised and often an undesirable place to be.</p>
<p>Tangata Whenua</p> <p>TW-8 - <i>Tangata whenua actively participate in resource management processes.</i></p> <p>TW-9 - <i>Recognise that only tangata whenua can identify impacts on their relationship with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance to Māori.</i></p> <p>TW-10 - <i>Tangata whenua are able to protect, develop and use Māori land in a way which is consistent with their culture and traditions and their social and economic aspirations.</i></p> <p>TW-11 - <i>Provide for the relationship of tangata whenua with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance to Māori.</i></p> <p>TW-12 - <i>Recognise the contribution that tangata whenua and their relationship with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance make to the district's identity and sense of belonging.</i></p>	<p>For the reasons discussed within the CIA, the applicant's AEE, my AEE I consider the proposal to be consistent with Objective TW-8 to TW-10.</p>
<p>Urban Form and Development</p> <p>UFD-13</p> <p>The district develops in a cohesive, compact and structured way that:</p> <p>1. <i>maintains a compact urban form that provides for connected, liveable communities;</i></p>	<p>I consider that the proposal promotes UFD-13 and UFD-19 which are relevant to this proposal. The activity provides for high quality office space in a high density. The site is well located within the City Centre. The location is surrounded by service industries which would benefit from the activity.</p>

<ol style="list-style-type: none"> 2. <i>manages impacts on the natural and cultural environment;</i> 3. <i>recognises the relationship of tangata whenua with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes and other taonga of significance;</i> 4. <i>enables greater productivity and economic growth;</i> 5. <i>enables greater social and cultural vitality;</i> 6. <i>takes into account the short, medium and long-term potential impacts of climate change and the associated uncertainty;</i> 7. <i>utilises existing infrastructure and/or can be efficiently serviced with new infrastructure; and</i> 8. <i>meets the community's short, medium and long-term housing and industrial needs.</i> <p><i>UFD-19 - Urban environments are livable, connected, accessible, safe and well-designed spaces for the community to live, work and play, which:</i></p> <ol style="list-style-type: none"> 1. <i>integrate and enhance natural features and topography into the design of development to minimise environmental impacts;</i> 2. <i>recognise the local context and character of an area;</i> 3. <i>reduce opportunities for crime and perceptions of crime through design solutions;</i> 4. <i>create ease of movement in communities through connected transport networks, a range of transport modes and reduced reliance on private motorised vehicles;</i> 5. <i>incorporate matauranga Māori principles by involving tangata whenua in the design, construction and development of the built environment;</i> 6. <i>use low impact design solutions and/or healthy, accessible, energy efficient buildings; and</i> 7. <i>are adequately serviced by utilising and/or upgrading existing infrastructure or with new infrastructure.</i> 	
<i>Energy Infrastructure and Transport</i>	
<p><i>Transport</i></p> <p><i>TRAN-03 - Activities generate a type or level of traffic that is compatible with the local road transport network they obtain access to and from.</i></p>	<p>Andy Skerrett has provided comment regarding transport, parking and loading. Based on Mr Skerrett's conclusions and as NZTA have provided their written approval regarding any effects associated with the adjoining State Highway I consider that the</p>

<p>TRAN-O4 - <i>The existing and future transport network is not compromised by incompatible activities which may result in reverse sensitivity effects and/or conflict.</i></p> <p>TRAN-O5 - <i>Adverse effects from the construction, maintenance and development of the transport network are managed.</i></p> <p>TRAN-P3 - <i>Manage activities that occur on or in close proximity to the transport network, including:</i></p> <ol style="list-style-type: none"> 1. <i>erection of structures on or adjacent to an indicative road transport network;</i> 2. <i>erection of structures on or adjacent to a railway corridor;</i> 3. <i>high trip generator activities;</i> 4. <i>vehicle access points onto a state highway; and</i> 5. <i>vehicle access points over a railway level crossing.</i> <p>TRAN-P11</p> <p>Encourage buildings and new developments to:</p> <ol style="list-style-type: none"> 1. <i>provide free, secure and covered parking for bicycles and end-of-trip facilities such as secure lockers, showers and changing facilities; and</i> 2. <i>allocate parking for mobility devices, scooters, motorcycles, hybrid vehicles and car share or car pool vehicles and to provide charging points for electric vehicles</i> <p>TRAN-P13 - <i>Require that activities provide for the safe and efficient movement of vehicles on-site, onto and along the road transport network by:</i></p> <ol style="list-style-type: none"> 1. <i>providing appropriately designed and/or located vehicle access points, on-site parking including bicycle parking, loading and standing spaces, driveways, manoeuvring space and queuing space to reduce disruption to traffic flow, driver distraction and road congestion;</i> ... <p>TRAN-P14 - <i>Ensure that activities do not constrain or compromise the safe and efficient operation of the road transport network by:</i></p> <ol style="list-style-type: none"> 2. <i>minimising conflict between vehicles, pedestrians and cyclists;</i> 3. <i>managing the width of vehicle access points so that on-street parking is not reduced; and</i> 4. <i>managing adverse cumulative effects.</i> 	<p>proposal is consistent with TRAN-O3 to O5 and TRAN-P3, TRAN-P13.</p> <p>Regarding TRAN-P11 I think it would be useful for the applicant to elaborate on the provision of end of trip facilities. Particularly bike cages and showers. This is currently unclear. I note that showers and a bike cage is provided and therefore the proposal is generally consistent with TRAN-P11. However, it would be useful to understand how many people these facilities might cater for.</p>
Hazards and Risks	
Contaminated Land	Based on the information provided in the application I am comfortable that

<p>CL-O1 - <i>The risks to human health from contaminated land are avoided, remedied or mitigated.</i></p> <p>CL-P2 - <i>Ensure that contaminated land or potentially contaminated land is suitable for use by requiring investigation, remediation or management where necessary at the time of land use change, subdivision or re-development so as to minimise the risk to human health from the contamination</i></p>	<p>there are no risks presented from contaminated or potentially contaminated land and the proposal is consistent with CL-O1 and CL-P2.</p>
<p>Historic and Cultural Values</p>	
<p>Historic Heritage</p> <p>HH-O1 - <i>Historic heritage is recognised, protected and maintained.</i></p> <p>HH-O2 - <i>Historic heritage is appreciated by the community and is acknowledged as important to the district's identity.</i></p> <p>HH-P3 - <i>Protect and maintain heritage buildings, items and character areas from inappropriate activities by:</i></p> <ol style="list-style-type: none"> 1. <i>ensuring scheduled heritage buildings and items are not demolished and/or relocated;</i> 2. <i>ensuring buildings, structures, spaces and other features integral to the heritage character area are not demolished and/or relocated; and</i> 3. <i>requiring activities on, in or surrounding heritage buildings, items and character areas to avoid adverse effects on historic heritage values where practicable</i> <p>HH-P8 - <i>Ensure that activities adjacent to or affecting heritage buildings and items avoid adverse effects on the building's or item's historic heritage values, or where avoidance is not possible, that any adverse effects are appropriately remedied or mitigated, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the particular historic heritage values present and their setting;</i> 2. <i>the reduction or loss of historic heritage values, including the ability to interpret the place and its relationship with other heritage buildings and items;</i> 3. <i>the heritage building or item's sensitivity to change or capacity to accommodate change without compromising the historic heritage values and surrounds;</i> 4. <i>any opportunities to enhance heritage buildings and items;</i> 	<p>The proposal has not ignored surrounding heritage buildings or the adjoining Heritage Character Area. In response to further information the applicant has provided advice from a suitably qualified and experienced architect commenting on how the proposal address the heritage features of the area.</p> <p>I agree with the conclusions raised and believe the juxtaposition between modern and old and large and small will enhance the heritage features by accentuating their presence.</p> <p>With respects to the pre 1900 stone railway embankment advice from two separate archaeologists has confirmed that effects on archeology will be less than minor in nature and therefore consistent with policy HH-P8.</p>

<p>5. any assessments or advice from a suitably qualified and experienced heritage expert and/or archaeological expert; and/or</p> <p>6. the outcomes of consultation with Heritage New Zealand Pouhere Taonga</p>	
<p>Notable Trees</p> <p>TREE-O1 - Trees with notable botanical, landscape, amenity, historical or cultural (including tangata whenua) values are recognised, identified and protected.</p> <p>TREE-P3 - Allow the removal, partial removal or destruction of an unsafe or unsound scheduled notable tree where it has been certified by the Council that the tree is unsafe or unsound as determined by using the International Society of Arboriculture Tree Risk Assessment.</p> <p>TREE-P5 - Avoid the removal, partial removal or destruction of a scheduled notable tree, unless:</p> <ol style="list-style-type: none"> 1. it is necessary to prevent a serious threat to people or property; 2. it is necessary to enable the ongoing provision of essential infrastructure; 3. it is necessary to ensure compliance with the Electricity (Hazards from Trees) Regulations 2003; and/or 4. the tree is rendering the site incapable of reasonable use. 	<p>As the tree is not unsafe TREE-P3 is not relevant.</p> <p>I believe the proposals ability to be consistent with objective TREE-O1 hinges on the ability for the proposal to align with TREE-P5 (4).</p> <p>It is clear that the proposal falls well beyond the permitted height for the zone, particularly that under the ODP, however consideration to P5(4) is still relevant as there is evidence that the tree would likely have a significant impact on the ability of establishing even a 17-metre-tall building, which the PDP permits, without damaging or having to remove the tree. If the tree remained the health would be impacted by the reduction in sunlight. It is also my understanding that the tree may be considered as impeding on the strategic desires of NPDC's open space and reserves team for this area which includes land in Lots 2 and 3 DP 15492.</p> <p>I refer to the overview and core objectives for the CC zone. The overview states that building development in the city Centre is to be of a high standard and that vacant spaces between buildings are discouraged. Currently the notable tree is discouraging reasonable use of this site. Therefore, I believe the proposal is consistent with TREE-P5 (4) and therefor consistent with the relevant objectives and policies overall.</p>
<p>Sites of Significance to Maori</p> <p>SASM-O1 - Sites and areas of significance to Māori are recognised, protected and maintained.</p>	<p>Based on the conclusions in the CIA it is considered that the proposal is consistent with and in some instances promotes the objectives and policies identified.</p>

<p>SASM-02 - <i>The relationship of tangata whenua with sites and areas of significance to Māori is recognised and protected.</i></p> <p>SASM-03 - <i>Sites and areas of significance to Māori are appreciated by the community and are acknowledged as important to the district's identity.</i></p> <p>SASM-P2 - <i>Protect and maintain sites and areas of significance to Māori from inappropriate activities by:</i></p> <ol style="list-style-type: none"> 1. <i>ensuring identified sites and areas of significance to Māori are not disturbed, destroyed, removed and/or visually encroached upon; and</i> 2. <i>requiring activities on, or in proximity to sites and areas of significance to Māori to avoid adverse effects on cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua</i> <p>SASM-P4 - <i>Manage activities that occur on, or adjacent to scheduled sites and areas of significance to Māori that have the potential to compromise cultural, spiritual and/or heritage values, interests or associations of importance to tangata whenua, including:</i></p> <ol style="list-style-type: none"> 1. <i>erection of, additions to and relocation of structures;</i> 2. <i>earthworks; and</i> 3. <i>subdivision of land containing sites and areas of significance to Māori.</i> <p>SASM-P5 - <i>Ensure that activities on, adjacent to or affecting sites and areas of significance to Māori avoid adverse effects on the site or area, or where avoidance is not possible, appropriately remedy or mitigate adverse effects, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the site which may be affected;</i> 2. <i>the extent to which the activity may compromise tangata whenua's relationship with their ancestral lands, water, sites, wāhi tapu, and other taonga, and/or the ability to protect, maintain or enhance sites of significance to tangata whenua;</i> 3. <i>tangata whenua's responsibilities as kaitiaki and mana whenua;</i> 4. <i>any opportunities for tangata whenua's relationship with the site or area to be maintained or strengthened on an ongoing or long term basis, including practical mechanisms for mana whenua to access, use and maintain the identified site;</i> 	<p>I also not there is not trigger for consent under any of the SASM rules which do already have legal effect.</p>
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<p>5. <i>the outcomes of any consultation with and/or cultural advice provided by mana whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the design, development and/or operation of activities that may affect the site; and</i></p> <p>6. <i>where the site is also an archaeological site, the relevant objectives and policies in the Historic Heritage Chapter.</i></p> <p>SASM-P6 - <i>Ensure that any structures that exceed permitted height limits on or adjacent to sites and areas of significance to Māori are appropriately located and that any adverse effects associated with the additional height are appropriately avoided, remedied or mitigated, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the site which may be affected by the over-height structure;</i> 2. <i>the prominence of the structure's location and the extent to which the over-height structure will visually encroach upon the site or area and affect tangata whenua's relationship with the site or area and/or their ability to exercise their customary responsibilities as mana whenua and kaitiaki;</i> 3. <i>the necessity for the structure, any alternative locations for the structure on the site and the duration that the structure will be located in this position;</i> 4. <i>the cumulative effects of the structure on the cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua; and</i> 5. <i>the outcomes of any consultation with and/or cultural advice provided by mana whenua, in particular with respect to mitigation measures and/or the incorporation of mātauranga Māori principles into the overall scale, form, composition and design of the structure, to</i> <ol style="list-style-type: none"> a. <i>minimise adverse visual effects on the site or area; and</i> b. <i>acknowledge and reflect the importance of the site to tangata whenua.</i> 	
<p>Viewshafts</p> <p>VIEWES-01 - <i>Viewshafts from public places to Mount Taranaki, the sea, Nga Motu/Sugar Loaf Islands and</i></p>	<p>The view shafts effected by the proposal protect views of the sea and wind wand. Based on the detail provided within my AEE, the applicant's AEE, Mr. McEwan's LVIA and Mr. Bain's</p>

<p><i>significant landmarks that provide a strong sense of place and identity are recognised and maintained.</i></p> <p>VIEWS-P3 - <i>Ensure that any structure that exceeds permitted height limits within a viewshaft is appropriately located and does not result in inappropriate adverse visual effects on the viewshaft, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the extent to which the additional height of the structure will encroach upon the core part of the view and/or compromise the visual coherence or integrity of the viewshaft and its view;</i> 2. <i>the focal elements that will be affected and the ability to interpret the view;</i> 3. <i>the reduction or loss of amenity, vegetation and/or landscaping values;</i> 4. <i>the particular cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the viewshaft which may be affected by the over-height structure;</i> 5. <i>the outcomes of any consultation with tangata whenua, in particular with respect to mitigation measures and/or opportunities to incorporate mātauranga Māori principles into the overall scale, form, composition and design of the structure, to:</i> <ol style="list-style-type: none"> a. <i>minimise adverse visual effects on any cultural, spiritual and/or historical values, interests or associations of importance to tangata whenua that are associated with the viewshaft; and</i> b. <i>acknowledge and reflect the importance of the viewshaft to tangata whenua.</i> 6. <i>the view's sensitivity to change or capacity to accommodate change;</i> 7. <i>whether the additional height of the structure will enhance the quality of the view through its design; and/or</i> 8. <i>whether the proposed structure and/or additional height of the structure has a functional or operational need to be located within the viewshaft, any alternative locations for the structure on the site and the permanency of the structure.</i> 	<p>peer reviews I consider that the proposals effect on the Marsden Hill / Pukaka Pa viewshaft and Cameron Street viewshaft is acceptable and therefore consistent with the objectives and policies identified.</p> <p>With regard to the Victoria Street viewshaft, I need to balance effects on the viewshaft against the relevant objectives and policies identified. I believe that the conclusions within the AEE and LVIA are largely attributed to the picture framing effect of the viewshaft. For this reason I don't believe that the proposal incurs an effect on the viewshaft that would make the proposal inconsistent VIEW-P3(2).</p> <p>Cultural effects have been addressed within the CIA and therefore consistency with VIEW-P3(5) is achieved.</p> <p>With regard to VIEW-P3(8) there is a functional need to locate the building at this location given the limited availability of central city sites, further there is functional need for the height due to the reasons previously discussed regarding economic viability.</p> <p>In an overall sense I feel that the proposal is consistent with the relevant objectives and policies identified. Particularly in the sense that there is a functional need for the proposed height, the seaview is only negligibly impacted at Marsden Hill / Pukaka Pa, Cameron Street is not impacted and the effects at Marsden Hill / Pukaka Pa have been determined to be minor while also contributing positively cultural matters.</p>
Natural Environment Values	
<p>Waterbodies</p> <p>WB-01 - <i>Waterbodies with natural character and ecology, recreation, cultural, spiritual and heritage values, and their margins are protected from inappropriate activities.</i></p>	<p>The Huatoki is approximately 10 metres from the site's eastern boundary. The proposal addresses the river by both providing through access to the river and through the eastern elevation's façade and stairwell design. Overall, I</p>

<p>WB-02 - <i>Public access to and along waterbodies with high recreation, scenic or amenity values is maintained and enhanced.</i></p> <p>WB-03 - <i>The adverse effects of activities on the values of waterbodies are avoided, remedied or mitigated.</i></p> <p>WB-04 <i>The relationship of tangata whenua and their traditions, values and interests associated with waterbodies are recognised and provided for.</i></p> <p>WB-P3 - <i>Require that activities proposing to locate on sites adjoining a waterbody, including a significant waterbody, demonstrate that the activity is located appropriately having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the particular natural character, ecological, recreational, cultural, spiritual, heritage and/or amenity values of the waterbody and the extent to which the values of the waterbody may be adversely affected by the activity;</i> 2. <i>the purpose of the activity and whether it has a functional need to be located adjoining a waterbody;</i> 3. <i>the ability to effectively restore and rehabilitate the waterbody and/or off-set adverse effects;</i> 4. <i>for waterbodies which have cultural, spiritual and/or historic values and interests or associations of importance to tangata whenua, the outcomes of any consultation with and/or cultural advice provided by tangata whenua as kaitiaki, including with respect to mitigation measures; and</i> 5. <i>whether the activity would create new or exacerbate existing natural hazards, including flooding or stream bank erosion.</i> <p>WB-P6 - <i>Consider the incorporation of mātauranga Māori principles into the design, development and/or operation of activities on sites adjoining waterbodies which have cultural, spiritual and/or historic values and interests or associations of importance to tangata whenua and provide opportunities for tangata whenua to exercise their customary responsibilities as mana whenua and kaitiaki in respect of waterbodies</i></p>	<p>believe that the proposal is consistent with the relevant waterbodies objectives and policies identified.</p>
Area Specific Matters	
<p>City Centre Zone</p> <p>CCZ-01 - <i>The city centre is the principal centre in the district and the Taranaki region.</i></p>	<p>Given the proposal being for a multi storey commercial / residential development I consider that the proposal is inherently consistent with a majority of the City Centre Zone</p>

<p>CCZ-02 - <i>The city centre is the primary location for a wide range of retail and business service activities, living activities, community facilities and visitor accommodation.</i></p> <p>CCZ-03 - <i>The city centre is a compact, dynamic and vibrant retail area.</i></p> <p>CCZ-04 - <i>The structures in the city centre are well designed and contribute positively to the streetscape.</i></p> <p>CCZ-05 - <i>The city centre is an attractive, accessible and safe environment for people to work, live and play.</i></p> <p>CCZ-06 - <i>Increased numbers of people live in the city centre.</i></p> <p>CCZ-07 - <i>The city centre's historic and cultural heritage is maintained and enhanced and contributes to the city's unique sense of place and identity.</i></p> <p>CCZ-08 - <i>The role and function of the city centre is not compromised by incompatible activities and/or built form.</i></p> <p>CCZ-P1 - <i>Allow activities which are compatible with the role, function and predominant character of the City Centre Zone, while ensuring their design, scale and intensity is appropriate, including:</i></p> <ol style="list-style-type: none"> 1. <i>retail activities;</i> 2. <i>business service activities;</i> 3. <i>sensitive activities;</i> 4. <i>medical and health services;</i> 5. <i>sport and recreation activities; and</i> 6. <i>Māori purpose activities.</i> <p>CCZ-P5 - <i>Maintain the role, function and predominant character of the City Centre Zone by controlling the effects of:</i></p> <ol style="list-style-type: none"> 1. <i>inactive frontages;</i> 2. <i>total or partial demolition of structures;</i> 3. <i>the erection of structures;</i> 4. <i>alterations to exteriors of structures;</i> 5. <i>additions to structures;</i> 6. <i>structure height;</i> 7. <i>noise and light; and</i> 8. <i>signage.</i> 	<p>objectives and policies without much assessment required.</p> <p>I do refer to policies 6 and 8 and consider that the building is appropriately designed to address the Huatoki River and Cultural significance of the area as well as providing an interesting interface with the surrounding streetscape.</p> <p>With regard to CCZ-P6(6) I believe that although not similar in height or design with the adjoining and opposite heritage buildings, I believe the effects have been suitably addressed and agree with the assessment of effects supplied by the Applicant including Clive Cullen's statement which details the benefits of juxtaposition between modern and old to accentuate heritage.</p> <p>CCZ-P5(6) and CCZ-P10 are identified as requiring consideration given the manner in which the proposal is significantly overheight. Under the PDP there is a maximum height of 17 metres (3 more than the ODP) and the building is within the height management area. However, the building is outside of the Huatoki basin height management area and therefore subject to the 17 metre height restriction. However, I feel it is difficult to state that the proposal is consistent with CCZ-P10. Particularly given Mr. Bain's assessment where he tends to believe that the location is appropriate for a tall and even over height building but potentially not to the extent of what is proposed.</p> <p>I highlight CCZ-P9(4) and consider that the proposal aligns with this objective by addressing the interface with the stream, removing the notable tree and providing through access to the stream from Brougham Street. Overall I believe the proposal aligns with NPDCs broader strategy for the area. Shading is addressed within the AEE and the proposal is therefore consistent with the relevant policies.</p>
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<p>CCZ-P6 - <i>Require activities on pedestrian streets to maintain an active frontage and to contribute to a vibrant retail area by:</i></p> <ol style="list-style-type: none"> 1. <i>providing a verandah and/or other forms of shelter for pedestrians;</i> 2. <i>providing adequate transparent glazing so that goods and services are visible to create engaging, retail focused spaces;</i> 3. <i>providing an obvious public entrance;</i> 4. <i>locating parking and servicing areas within or to the rear of buildings; and</i> 5. <i>ensuring pedestrians can move safely and efficiently along the street and within public places.</i> <p>CCZ-P8 - <i>Require structures and/or alterations to the exterior of or additions to structures to be compatible with the character and amenity of the relevant area by:</i></p> <ol style="list-style-type: none"> 1. <i>having an interesting and engaging frontage with variations in form, materials and colour;</i> 2. <i>providing clearly visible and accessible entranceways and connections to pedestrian networks, including safe and practicable access for people with limited mobility;</i> 3. <i>locating utilities and service areas so they are not visible from public areas and are screened or incorporated into the overall structure form;</i> 4. <i>using sustainable design methods, where possible, to minimise the use of energy and water resources and to create healthy living and working environments;</i> 5. <i>incorporating mātauranga Māori principles into the design and construction of the structure and, where appropriate, art works or unique and recognisable features that reflect cultural, spiritual and/or heritage values of importance to tangata whenua; and</i> 6. <i>maintaining similarity of frontage alignment, height and overall bulk, form and scale for structures adjoining a heritage building and/or within the heritage character area.</i> <p>CCZ-P9 - <i>In addition to Policy CCZ-P8, require structures and/or alterations to the exterior of or additions to structures that adjoin a public place to:</i></p> <ol style="list-style-type: none"> 1. <i>maximise opportunities for the public to use and access that place;</i> 2. <i>maintain and enhance the city centre's historic and cultural heritage;</i> 	<p>In a broad sense the proposal is consistent with the overarching purpose of the CCZ chapter and underlying objectives and policies. I do however feel there is conflict with CCZ-P10, but when balancing the proposal against all of the objectives and policies listed, of which there is a vast quantity, I believe it can be described that the proposal is more so aligned then not with the CCZ Objectives and Policies identified.</p>
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<p>3. <i>minimise any adverse shading effects on the public place; and</i></p> <p>4. <i>Minimise the adverse impacts on the openness, historical and cultural values of the Huatoki Stream.</i></p> <p>CCZ-P10 - <i>Ensure that structures proposing to exceed permitted height limits are appropriate, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>the prominence of the site's location, the extent of the structure's visibility to the public and its compatibility with the character and amenity of the area;</i> 2. <i>the overall scale, form, composition and design of the structure, the effects of the additional height and the ability to minimise adverse visual effects by breaking up dominant and/or monotonous facades;</i> 3. <i>the proximity of the structure to the coastal environment and its impact on coastal values;</i> 4. <i>the proximity of the structure to the Huatoki Stream and its impact on the openness, historical and cultural values of the stream;</i> 5. <i>the site's size, topography and the orientation of the structure on the site and whether the structure will result in adverse shading effects;</i> 6. <i>the extent to which the structure encroaches into the core part of the view and the focal elements that will be affected within any viewshaft;</i> 7. <i>the impact on any adjacent heritage building and/or the heritage character area, ensuring similarity of frontage alignment, height and overall bulk, form and scale.</i> <p>CCZ-P11 - <i>Ensure any effects generated by activities are of a type, scale and level that are appropriate for the City Centre Zone and that will maintain city centre amenity, having regard to:</i></p> <ol style="list-style-type: none"> 1. <i>whether building occupants have adequate access to daylight;</i> 2. <i>the ability to manage noise and light emissions at an acceptable, reasonable level; and</i> 3. <i>the size, design and type of signage and whether it is compatible with the character and amenity of the city centre</i> 	
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180. The Proposed New Plymouth District Plan is required to be considered under section 104(1)(b) but the weight that it is given should be limited as submissions have been received seeking changes to the provisions of that plan as they apply to the subject

site, the proposal, rules, objectives and policies and those submissions are yet to be heard. At this point notification of the summary of submissions and the call for further submissions has closed and Council's officers are currently drafting reports. Hearings will be held after this process and anticipated to be completed for mid to late 2021.

181. Council's District Plan Coordinator, Sarah Edwards, provided a summary of the relevant Proposed District Plan submissions to the PDP. I have included this summary within Appendix H of this report.
182. Acknowledging the limited weight that can be afforded to the provisions of the Proposed Plan as hearings have not yet been held nor have decisions been made, I consider that the proposal would be inconsistent with objectives CCZ-O8 and CCZ-P10. This conclusion is informed by my assessment of effects provided within earlier paragraphs regarding building height and viewshaft impacts. My conclusion has also been informed by Mr. Mc. Ewans LVIA's and Mr. Bains Peer reviews.
183. I consider that the proposal would be able to achieve consistency with most other Proposed Plan objectives listed in Table 3 above, with the development of appropriate conditions of consent.

Operative and Proposed District Plan Integrity

Operative District Plan

184. The consistent administration of the District Plan is necessary for maintaining the integrity of the District Plan and the purposes it serves under the RMA and to the community. Concerns can arise when a consent for a Discretionary or Non-Complying activity is granted and despite the application potentially being inconsistent with certain objectives and policies of the District Plan. This may lead to what is described as in planning a precedent effect where an expectation is created that consent will and should be granted for activities of a similar scale and/or triggering the same or similar rules. In this case the removal of a notable tree and establishment of a significantly over height building which impacts on protected view shafts encroachments.
185. I note that only the removal of the notable tree results in the non-complying activity status under the PDP. The over height infringements under the ODP and removal of a notable tree under the ODP all carry a Restricted Discretionary Activity Status. However applying the bundling principle, the proposal is for a Non-Complying Activity overall.
186. In this case, I consider that overall consistency with the objectives and policies of the District Plan is dependent a balancing approach where the broader outcomes of the proposal need to be assessed against the more direct adverse effects anticipated with the provision of an over height building and removal of a notable tree. Consideration to positive effects should also contribute to the assessment. If it is able to be demonstrated that the proposal has the ability to suitably address any actual and

potential adverse effects through achieving an outcome which is consistent with the wider overarching purpose of the plan, and particularly the business chapter's objectives and policies, consent may be granted without setting precedent effects. I believe this as every proposal should be considered on the basis of its own merits. The proposal at hand is unique in its location and design and therefore I don't believe that a precedent effect is created. This is also relevant to the notable tree where its value needs to be weighed up against its nuisance in limiting development in manner which is desired from a city centre perspective (even if a building of lesser height were to be proposed).

187. Every application received by council should be assessed based on its merits, both with respect to design and location. As it is unlikely such an activity could be replicated, particularly when regard is given to its specific location, and as the proposed building is unique, it is considered unlikely that the proposal would set a clear precedent regarding over height buildings in the district. The CBD will always have an urban form and despite being protected views and viewshafts will ultimately be subject to degrees of changes. It is not considered that the proposal would have a cumulative impact on the relevant viewshafts over and above one which is acceptable when balanced against the anticipated positive effects attributed to the proposal. Namely cultural effects, supporting the opening of the Huatoki River, supporting Council's strategic direction for the location and promoting a vibrant and well-functioning central city.
188. In my opinion if the Commissioner was to grant resource consent, district plan integrity or precedent effects would be unlikely to arise due to the uniqueness of the application.

Regional Policy Statement

189. Regional Policy Statements are prepared by Regional Council's to achieve the purpose of the Act by providing an overview of the resource management issues of the region and identify suitable objectives, policies and methods to achieve integrated management. The objectives, policies and rules of a District Plan should not be contrary to Regional Policy Statement.
190. Section 5.4 of the applicants AEE addresses the Regional Policy Statement for Taranaki 2010 (RPS). I concur with the applicant's assessment that Chapters 5, 6, 10 and 15 are relevant – I also agree that the application is not contrary to the relevant objectives of the RPS under the chapters identified. The RPS includes a strong focus on sustainable management, of which requires the balancing of environmental, economic, social and cultural effects. I believe that the proposal is consistent with the concept of sustainable management given the buildings appropriate location within the city's centre and the positive cultural, social and economic effects anticipated. However, I believe that the Commissioner will still be required to balance this against the adverse landscape/visual amenity effects which have been described in my AEE section to this report.

National Policy Statement for Urban Development Capacity 2020

191. The National Policy Statement for Urban Development Capacity 2020 came into effect in August 2020 (NPS-UDC). NPS-UDC seeks to promote that Councils provide a sufficient supply of residential and business land to facilitate continued urban growth and the demands of the community to provide for their social, economic and cultural wellbeing. The NPS sets specific objectives and policies relevant to the decision making process under the heading 'Outcomes for Planning Decisions', these objectives and policies are relevant to the proposal at hand. The relevant objectives, OA1 – OA3, seek to provide for urban environments with sufficient opportunity for the development of housing and business land to meet demand and provide choices for dwelling types and places to locate businesses. Including responsiveness to changing needs.
192. The objectives I consider relevant to the proposal include Objectives 1, 3, 4, 5, 6 and 8. The policies relevant to the proposal include policies 1, 2, 5, 6 and 9. The full text of the relevant objectives and policies stated above are included in Appendix G to this report. When reading the objectives and policies the New Plymouth District is identified as a "Tier 2" local authority. In assessing the relevant objectives and policies I believe it is also helpful to keep the definition of urban capacity at the front of mind.

Development capacity means the capacity of land to be developed for housing or for business use, based on:

- a) the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and
- b) the provision of adequate development infrastructure to support the development of land for housing or business use

193. The most relevant policies to the proposal includes Policy 1, Policy 5, Policy 6 and Policy 9. These are quoted in the text below

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- a) have or enable a variety of homes that:
 - i. meet the needs, in terms of type, price, and location, of different households; and
 - ii. enable Māori to express their cultural traditions and norms; and National Policy Statement on Urban Development 2020 11
- b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size;
- c) and have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
- d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
- e) support reductions in greenhouse gas emissions; and are resilient to the likely current and future effects of climate change.

Policy 5: Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of:

- a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or
- b) relative demand for housing and business use in that location.

Policy 6: *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

- a) *the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement*
- b) *that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:*
 - i. *may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and*
 - ii. *are not, of themselves, an adverse effect.*
- c) *the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)*
- d) *any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity*
- e) *the likely current and future effects of climate change.*

Policy 9: *Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:*

- a) *involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and*
- b) *when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and*
- c) *provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and*
- d) *operate in a way that is consistent with iwi participation legislation*

194. In my opinion the proposal generally aligns with the NPS-UD 2020 through the provision of high-quality business space in the form of office tenancies in New Plymouth's City Centre. A majority of New Plymouth's central city building stock is aged and the CBD has also been put at risk by business moving out of the city due to the cost of land and building constraints making CBD projects economically challenging. Although a small component, it is worth noting the variety which the residential apartment contributes to the proposal. However, the provision of a single apartment with a large ground floor area does little in the way of addressing any housing issues which the NPS-UD promotes.

195. Policy 6 provides wording which identifies that planned urban development may detract from amenity values appreciated by some but improve values appreciated by others and provides for future generations. I believe this statement reflects the challenges presented by the notable tree, of which seriously hinders the development of the site, even if a building of a lesser scale was proposed. Such as a 17-metre-tall building as anticipated by the PDP. However, the relevance of this to the scale of the over height infringement requires greater consideration. The infringement is in my opinion somewhat excessive at 11.5 metres over height in a zone which permits only a 14-metre height (17 metre in the PDP). However, the mitigation proposed and positive cultural, social and economic benefits does help to mitigate the effects on amenity values associated with the scale of the infringement. Being a timber design and the proposal to obtain a "5 Star NABERSNZ" energy efficiency aligns with Policy 6 (e). With respect to Policy 9,

Treaty of Waitangi Principles, I consider that the proposal is consistent with this Policy through participation of Iwi and Hapu during the design phase, and through the proposal to continue a commitment to consultation with tangata whenua.

196. Overall, and in balancing the matters I have identified above, I believe that the proposal is consistent with the NPS-UD 2020. The NPS-UD places protection on amenity but overall is document which promotes development and recognises the economic and social benefits of which a high-quality built environment provides. Particularly by creating a thriving and vibrant City Centre, something that is currently lacking at this inner-city location and has been for a number of years.

197. Given the above, I consider the proposal is consistent with the NPS-UDC.

National Policy Statement for Freshwater Management 2020

198. The National Policy Statement for Freshwater Management 2020 (NPS) sets out the objectives and policies for freshwater management under the Resource Management Act 1991.

199. The proposal is consistent with the relevant provisions of the Freshwater NPS. The waterbody is located over 10 metres from the proposed buildings eastern facade. Further it is noted that the applicant is not currently seeking a resource consent undertake earthworks. If required consideration of erosion and sediment controls will be made at that point and I do not believe that these two consents require consideration concurrently.

200. The CIA provided includes commentary against Te Mana o te Wai (Policy 1) provisions in the NPS-FM. In conclusion Ngat te Whiti confirms that suitable and meaningful consultation with tangata whenua has occurred and that the role of kaitiaki will continue through further future involvement of Iwi and Hapu through the development of, and application of, the kaitiake forum conditions detailed within the CIA, earlier sections of this report and the draft conditions presented with this report.

201. In my opinion the proposal is consistent with the objectives and policies of the NPS-FM.

Tai Whenua, Tai Tangata, Tai Ao – Te Kotahitanga o Atiawa Taranaki Environmental Management Plan

202. Tai Whenua, Tai Tangata, Tai Ao (“Te Atiawa EMP”) was released in February 2020. The applicants AEE has made an assessment against the Te Atiawa EMP. Further, the CIA undertaken by Te Atiawa has also provided consideration to their EMP. I generally concur with the assessments provided in the AEE and the CIA provides for further information relevant to making an assessment against cultural effects. In summary the AEE indicates consistency with the EMP. However, to ensure the proposal’s consistency with the intent of the relevant objectives and

policies of the Te Atiawa EMP, those matters detailed with the CIA and particularly positive effects, which are reliant on the development of conditions to be secured and drafted as detailed within the CIA or by subsequent consultation arrangements between Te Atiawa Iwi and the Applicant.

203. The following objectives and policies have been identified as relevant to the proposal:

- *TTHA3.1 - Te Atiawa members who hold mātauranga or knowledge that has been passed down through generations are recognised as experts on resource management issues in our rohe.*
- *TTHA3.2 - Engagement with Te Atiawa, as tangata whenua, on resource management issues meets our expectations.*
- *TTHA4.1 - Te Atiawa are recognised as kaitiaki over natural and physical and cultural resources within our respective rohe boundaries.*
- *TTHA4.2 - Te Atiawa exercise our duties as kaitiaki within our respective rohe boundaries.*
- *TTHA4.3 - Protect, maintain and enhance the mauri of natural resources which in turn sustains the social, economic, and cultural wellbeing of our people.*
- *TTHA5.1 - Te Atiawa are active participants in all resource management decision-making processes of central government agencies, regional and district councils and any other consenting authority.*
- *TTHA5.2 - The tikanga, values and principles of Te Atiawa are considered and appropriate weight is given to these values during the decision-making process.*
- *TTAN1.2 - Protection of wāhi tapu/wāhi taonga, urupā and sites of significance to Māori, from damage, modification, desecration, destruction and loss of access.*
- *TTAN1.3 - Protect the mauri of our ancestral lands and wāhi tapu/wāhi taonga, urupā and sites of significance to Māori.*
- *TTAN3.1 - Te Atiawa has a prominent and influential role in urban planning and development.*
- *TTAN3.2 - Acknowledge and provide for Te Atiawa values and the expressions of our narrative in the built form and landscaping or urban environments.*
- *TTAN4.1 - The interests, values and protection of whenua, water, wāhi tapu/wāhi taonga, urupā and sites of significance to Māori are provided for in the process and design of subdivisions.*
- *TTAN4.2 - Acknowledge and provide for Te Atiawa values and the expressions of our narrative in the built form and landscaping*
- *TTAN4.4 - Acknowledge and provide for Te Atiawa cultural landscapes in the built design to connect and deepen our 'sense of place'.*
- *TTAN6.1 - Wāhi tapu/wāhi taonga, urupā and sites of significance to Māori are protected from damage, modification, desecration or destruction.*
- *TTAN10.1 - Use and development of land is done in a manner where levels of contamination are maintained below the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 and subsequent amendments.*
- *TTOM7.1 - To obtain access to our ancestral mahinga kai areas and sites of significance to Māori along Te Atiawa Statutory Acknowledgement waterways.*
- *TTAR2.1 - Promote initiatives to reduce greenhouse gas emissions within our Te Atiawa rohe.*
- *TTHE1.1 - Ngā Hapū o Te Atiawa's relationship with wāhi tapu/ wāhi taonga, urupā and sites of significance, is recognised and protected.*

- *TTHE1.2 - The mauri of wāhi tapu/wāhi taonga, urupā and sites of significance is protected within the Te Atiawa rohe for current and future generations.*
- *TTHE2.1 - Ensure that wāhi tapu/wāhi taonga, urupā and sites of significance to Māori within our Te Atiawa rohe are protected from damage, modification, desecration, destruction and loss of access.*
- *TTHE3.1 - Support General Objectives which provide for Te Tai Hekenui.*
- *TTHE3.2 - Require access to be provided to Te Atiawa wāhi tapu/wāhi taonga, urupā and sites of significance to Māori at the time of development.*

204. I consider that the suggested Kaitiaki Forum conditions will ensure the certainty of the cultural effects mitigation recommended in the CIA report would help to ensure consistency of the proposal with the above objectives. In addition, there is a specific objective related to the provision of a cultural narrative in building design, several conditions relating to engagement of tangata whenua/Te Atiawa in various steps of the decision making process, acknowledgement of cultural landscapes and to provide greater access to waterways. I consider that the proposal is not only consistent with but also goes toward promoting the above-mentioned objectives.

Part 2 Assessment

R J Davidson Trust v Marlborough District Council - CA97/2017 (2018)

205. The Court of Appeal decision on RJ Davidson Family Trust v Marlborough District Council influenced the way in which Part 2 should be applied and determined that:

"If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8."

206. The RJ Davidson Family Trust decision confirmed that it is appropriate to consider Part 2 of the RMA when assessing a resource consent application but only in specific circumstances. Otherwise, an assessment against Part 2 will not necessarily add to the overall assessment process. I consider that, and particularly being that the operative plan has been in place for over 15 years and there is a Proposed Plan currently subject to a future hearings process with a different zoning framework for the site, that it is necessary to have regard to Part 2 of the RMA. There are also matters of national importance under sections 6(e) and 6(f) that are relevant to the proposal. Therefore, consideration of the resource consent application under Section 104 of the RMA is subject to Part 2 of which identifies the purpose and principles of the Act.

Purpose of the Act – Section 5

207. The purpose of the RMA is defined under Section 5 of the RMA;

"Section 5 – Purpose of the Act

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
 - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

208. The applicant has described in their AEE that they believe the conclusions resulting from the RJ Davidson decision are relevant to the proposal and that "*an assessment of this application against Part 2 would not necessarily add anything to the evaluative exercise required*". This conclusion was reached by the applicant in stating that the ODP, PDP and other relevant planning documents have been prepared with a coherent set of policies designed to achieve clear environmental outcomes. However, and for completeness the applicant has provided an assessment of Part 2 which I consider to be helpful and necessary. Particularly given the fact that the ODP is approaching 16 years old that there is a replacement District Plan (PDP) with a different zoning description and rule framework for the site.

209. The applicants AEE at section 5.6 includes an assessment against Part 2 of the Act. Of which I agree with their conclusions in part, including that the applicant has considered, suitably assessed and provided for:

- Section 6(e) through the consultation carried out with Te Atiawa and Ngati te Whiti including the development of a CIA and engagement with Iwi and Hapu representatives.
- Section 6(f) – An archaeological assessment has been provided by the applicant which assess the potential impacts of the removal of the notable tree on the historic stone wall will be low. A conclusion of which a Council engaged Archaeologists agrees with.
- Section 6(f) – Effects on heritage building have been addressed within Mr. Cullen's assessment of the proposals effects on heritage buildings in proximity to the site.

210. However, given my conclusions on the landscape and visual amenity effects, viewshaft effects, removal of the notable tree effects, heritage character effects and other related effects as outlined throughout this report, and in taking balancing approach, I consider overall that the proposal will enable the sustainable management of the Business A Environment Area land resource.

211. The remaining relevant Part 2 provisions including Sections 7 and 8 are considered under the following subheadings.

Other Matters – Section 7

212. I consider the following other matters to be relevant to the proposal
213. *(a) Kaitiakitanga* - Kaitiakitanga is the exercise of guardianship by tangata whenua in accordance with tikanga Maori. In my opinion the applicant has acknowledged the significant cultural, spiritual, historical, and traditional importance of the Huatoki and surrounding area including the subject site to Te Atiawa and Ngāti Te Whiti through the engagement with the hapū including in extensive waananga workshop and the commissioning of the CIA. Further a proposed Kaitiaki Forum condition should assist in ensuring that if consent is granted that the project proceeds with regard to kaitakitanga through ongoing consultation.
214. Te Kotahitanga o Te Atiawa Trust were submitter in support subject to the conditions suggested within their CIA which I have chosen to adopt should the application be granted consent.
215. *(b) the efficient use and sustainable development of natural and physical resources* – With regard to Section 7(b) the proposal has both negative and positive effects. The proposal will result in a adverse effects on a protected viewshaft at a more than minor level and will also have adverse effects on landscape and amenity values, building heritage values, archaeology and a protected notable tree. Comparatively the development of the site will allow for the construction of a modern and aesthetically pleasing building serving the underlying zonings purpose on an empty site which has been disused for over 20 years. The proposal will also enable connectivity, improve passive surveillance, address/celebrate the Huatoki River, recognise the cultural values of the area, promote vibrancy and economic prosperity of the City Centre and aligns with NPDC strategic objectives for the central city location location. In my opinion these aspects promote the efficient use and development of resources.
216. *(c) the maintenance and enhancement of amenity values* – As set within the AEE, I consider that the proposal would both enhance the amenity values of the wider urban area but will also detract from the amenity of a single protected viewshaft. There are also losses in amenity from the removal of the notable tree but positives associated with the trees removal facilitating development of this location of which carries low amenity value. I believe a balanced decision is required where the positives need to be weighed up against the negatives.
217. *(f) maintenance and enhancement of the quality of the environment* – As with the amenity values assessment above the proposal will have both adverse and positive effects on the overall quality of the environment. However, when I balance the two up, and reflect on the low amenity of the location, that the positives will outweigh the negatives. The site is underdeveloped and contributes little towards central city amenity, further the absence of passive surveillance in the adjoining NPDC land does not promote positive amenity in the area. The carpark is an un-even gravelled area and has been underutilised. Its potential development is also further hindered by

the protected tree by de-valuing the land (if it cannot be removed) as it renders the site incapable of what I would consider reasonable use.

218. Section 8 requires NPDC to consider the principles of the Treaty of Waitangi. This recognises Māori interests in the use, management, and development of resources, and the Treaty principles are an important part of sustainable management in New Zealand.
219. In engaging with Ngāti Te Whiti and through the development of a comprehensive CIA, the applicant has acted in good faith in recognising the interests of Māori and in exercising the principles of the Treaty of Waitangi. The applicant has also been able to gain the conditional support of Te Kotahitanga o Te Atiawa Trust. In my opinion, the conditions proposed by Te Kotahitanga o Te Atiawa Trust can form part of any resource consent granted, if granted, to adhere to the conditions put forward by Te Kotahitanga o Te Atiawa Trust.

Part 2 Summary

220. In conclusion of the Part 2 matters the proposal is anticipated to achieve sustainable management by balancing adverse effects on the environment while contributing positively to the economy, amenity values and cultural values. As described above, the proposal would also achieve matters of national importance where relevant. To achieve sustainable management the activity should not have an adverse effect of which is so significant where it would outweigh the positive effects identified throughout this report and by the applicant within their AEE.
221. I am therefore of the opinion that in an overall sense, and in taking a balancing approach, that the proposed land use development would promote sustainable management.

Decisions on Applications Sections 104D - Gateway Test

222. For an application for a Non-Complying Activity to be granted it must pass the "gateway test". The gateway test consists of two "limbs". If either one of the limbs is passed, then the application is eligible for approval, however the proposed activity must still be considered under s104. The two limbs are;
- Before granting an application a council must be satisfied that either the adverse effects of the activity on the environment will be minor (s104D(1)(a)), or;
 - The proposed activity will not be contrary to the objectives and policies of a proposed plan and/or plan (s104D(1)(b)).
223. Based on my assessment of effects section to this report I consider that the potential adverse effects on the Victoria Road View Shaft have been assessed as more than minor. I am also of the opinion that there is the potential for there to be more than minor adverse landscape and amenity effects on immediately surrounding areas, both when viewed from central city but also fringe central city locations, i.e. Victoria Road. The effects is largely attributed to the bulk, scale and dominance of the

building. I do however agree with Mr. Bain that through a reduction of height by a single floor, or alternative design mitigation, that there is the potential to mitigate the adverse effects described further, and to a level which I would consider to be less than minor. This might be something the applicant wishes to consider as a reduction in scale would not result in the requirement for a new consent to be lodged and could be considered under this hearing process as a mitigation measure.

224. For the reasons specified in the above paragraph the proposal in its current form fails to pass the effects limb of the Gateway Test.
225. My report has provided what I consider to be a complete and thorough assessment of both the ODP and PDP objectives and policies. Given the status of the PDP I believe that greater weight should be given to the ODP. My assessment of the objectives and policies does find in places where the proposal is contrary with certain policies, but when assessed holistically I find that the proposal is generally consistent with the relevant objectives and policies "as a whole", and in many places promoting relevant objectives and policies of the ODP and PDP. Consistent with my summarising statements under each the ODP and PDP objective and policies assessments.
226. I conclude that the consideration to granting the proposal is possible, as in my opinion the proposal passes the objectives and policies limb of the gateway test.

Weighting Exercise

227. The PDP has not yet been tested nor have any decisions been made, therefore more weight should be afforded to the operative district plan rules when making a decision.

Conclusions

228. As discussed throughout this report there is a requirement to balance positive effects and adverse effects before making an overall recommendation.
229. The supporting submission of Te Kotahitanga o Te Atiawa Trust, although conditional, and the comments within the CIA are notable. It is a positive step toward setting an example as to best practice iwi consultation in the district. I believe the submission received is reflective of this work and the commitment made by the applicant. It is my opinion that through supporting the recommended conditions requested by Te Kotahitanga o Te Atiawa Trust that cultural effects on Ngāti Te Whiti hapū are suitably mitigated and in part positive effects can be anticipated.
230. The applicant's AEE, including the supporting advice from BOON, concludes that there are effects on landscape and visual amenity at more than minor levels. A conclusion which Council's specialist, Mr. Bain, also agrees with. However, the proposed building is of a modern and architecturally pleasing design which incorporates innovative and sustainable design features such as the permeable glass

facades and a visible internal timber construction. The building is also sited at a location which has been underutilised for over 20 years and currently contributes little in the way of central city amenity and/or function. For these reasons I note the potential positive effects associated with the development with regard to improving amenity values in the area.

231. I believe a proposal of this scale and quality is likely to contribute positively to the economic functioning of the city. The proposal will bring workers in to the city and will entice desirable tenants through the provision of high quality office space. I anticipate that this would likely have positive flow on effects to other existing businesses operating in the area.
232. I believe that any actual and potential adverse effects associated with transport, parking, earthworks or construction matters, and as discussed within my AEE section, can be suitably addressed through appropriate consent conditions.
233. Consideration has also been made against the effects associated with the loss of notable tree ID 97, and the effects the removal of this tree will have on the stone railway embankment. Both the applicant's and council's technical advice regarding tree Item 97 confirms that that tree is of good health. However there is contention regarding life span. I agree that there will be a loss of amenity associated with the removal of the tree but conclude overall that the proposal, which the tree removal will facilitate, will add amenity to the existing area and therefore offset the effects of the loss of the tree. In this instance I consider the tree removal to be appropriate given the manner of which the proposal is hindering the reasonable development of the site.
234. On that basis, and on balance, I consider that it would be appropriate to under sections 104B and 104D of the RMA, to grant consent to the application on the basis of the imposition of suitable consent conditions.

Recommendation

235. In accordance with Sections 104, 104B and 104D of the Resource Management Act 1991, consent is granted to the application made by K.D. Holdings Limited for the:
 - Construction of a six-level mixed use building with a basement car park at the site described above. Levels 1 to 5 are proposed to be for commercial tenancies and the top floor is proposed to be a three-bedroom residential apartment and to facilitate the proposal to remove notable tree ID 97 located within the neighbouring New Plymouth District Council owned parcel of land, at 45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.
236. As a recommendation to grant consent has been reached I have included the following suggested conditions.

RESOURCE CONSENT LUC20/47704

Granted under Sections 95A, 95B, 95D, 95E, 104, 104B, 104D and 108 of the Resource Management Act 1991.

Applicant: K.D. Holdings Limited

Location: 45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.

Legal Description: PT Section 683 Town of New Plymouth, PT Lot 6 DP 3466 and Lot 2 DP 15492

Activity Status under Operative District Plan: Restricted Discretionary Activity

Activity Status under Proposed District Plan: Non-Complying Activity

Proposal: Construction of a six-level mixed use building exceeding the 14-metre height restriction for the Business A Environment Area, the 14-metre height restrictions for the Section 2 Cameron Street Viewshaft, Section 2 Victoria Street Viewshaft and Section 4 Marsland Hill Viewshaft, associated earthworks and removal of notable tree ID 97.

DECISION:

- In accordance with Sections 104, 104B and 104D of the Resource Management Act 1991, consent is granted to the application made by K.D. Holdings Limited for the Construction of a six-level mixed use building with a basement car park within PT Section 683 Town of New Plymouth, PT Lot 6 DP 3466 and Lot 2 DP 15492 and the removal of notable tree ID 97 within Lot 2 DP 15492.
- The development shall proceed as shown on the scheme plans prepared by BOON teamarchitects on behalf of K.D. Holdings Limited and entitled: "Brougham Street Development – 51 Brougham Street, New Plymouth", Job No: 6400, Drawing No: A1.01, A2.02, A2.03, A2.04, A3.01, A3.02, A4.01, A9.01, A9.02 and A9.03, dated 27/08/2020 and A2.01 dated 12/01/2021.
- Pursuant to section 125 of the Resource Management Act 1991 this consent shall have a five year lapse date from the date of granting.

Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:

1. The use and development of the site shall be as described within the application, including any subsequent information submitted by the applicant, and shall be substantially in accordance with the plans detailed below, and all referenced by the council as consent number LUC20/47704;

Drawing Number	Date	Drawing Name
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A1.01	27/08/2020	Proposed Site Plan
A2.01	12/01/2021	Proposed L0 Plan
A2.02	27/08/2020	Proposed L1 Plan
A2.03	27/08/2020	Proposed L2,3,4,5 Plan
A2.04	27/08/2020	Proposed L6 Floor Plan
A3.01	27/08/2020	Elevations
A3.02	27/08/2020	Elevations
A4.01	27/08/2020	Cross Sections
A9.01	27/08/2020	Shade Diagrams Summer Solstice
A9.02	27/08/2020	Shade Diagrams Winter Solstice

External Façades and Building Design Features

2. The final detailed design of the building shall be submitted to Council's Planning Lead for approval prior to the application for a building consent. The final detailed design shall confirm the following:
 - i. The glazed façade design and finish is required to achieve visual permeability.
 - ii. The final cultural narrative and fritting design on the external glass facades as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiake Forum condition.
 - iii. The final cultural narrative design on the external stairwell as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiake Forum.
 - iv. The final cultural narrative designs within the internal paved floor achieving the Hinakai (eel net) representations and as determined in consultation with Ngāti Te Whiti hapu under the requirements of the Kaitiake Forum
 - v. The confirmed location of the proposed setback internal walls.
 - vi. The finish of the internal timber structural components finish
 - vii. The treatment and external materials to be utilised for top floor apartment; and
 - viii. The treatment and external materials to be utilised for all remaining building elements
3. The sixth level (top) residential apartment building shall be detailed to include the same percentage facade perforation and/or transparency (glazing) as shown on the consent application drawings.
4. The sixth level (top) balustrade shall be glazed as shown on the drawings on the consent application drawings
5. The Consent Holder shall submit detailed design drawings and supporting information for the building design elements described under condition 2 to the Planning Lead for certification prior to building consent being lodged.
6. The design shall be consistent with the drawings referred to under Condition 1 above and a report confirming consistency shall be prepared by a suitably qualified and

experienced person, confirming this consistency shall be provided as part of the information required above under Condition 5.

7. Where the design proposed is not in accordance with the drawings listed under Condition 1, the Consent Holder shall submit alternative design drawings to the Planning Lead prior to building consent. The design drawings shall demonstrate compliance with the following
 - i. Building height shall not exceed a maximum of 25.5 metres above ground level as surveyed at the time of the granting of this consent; and
 - ii. That any design amendments result in a reduction of overall effects.

Advice Note

- a) The purpose of conditions 5 to 7 is to ensure that any proposed changes to the design that will not result in additional adverse visual or amenity effects on the surrounding environment and is intended to provide an alternative process to a formal s127 variation or consent application for design changes within the scope of consent. Excepting that Council reserves the right to require the consent holder to make a s127 application, or, as appropriate, new application for resource consent, if necessary.

Landscaping

8. A landscaping plan shall be submitted for approval to the Council's Planning Lead prior to the commencement of the development. The landscaping plan shall show the landscape planting on the top level apartment as proposed within the BOON Landscape & Visual Impact Assessment, Revision A, Dated 1st September 2020.
9. The landscaping required by Condition 8 shall illustrate how the proposed landscaping will soften the impacts of the building.
10. Landscaping shall be implemented within the first planting season on the completion of the development.
11. On completion of landscaping, the consent holder shall certify that these works have been completed and provide this certification to the Council's Planning Lead.
12. For the duration of this consent, the consent holder shall maintain all planting in a good and healthy condition. Any planting not in a good and healthy condition shall be replaced.

Building Height

13. The building shall not exceed 25.5 metres above the existing ground level at the time of the granting of this consent and as measured from the identified Taranaki Datum height within the site.

14. To facilitate Condition 13. A survey certificate shall be undertaken by the consent holder and supplied to council within 20 working days of the appeals period closing.

Cultural Items and Kaitiaki Forum

15. The consent holder shall engage Ngāti Te Whiti to provide and certify a cultural narrative for the development. Any cultural narrative shall be demonstrated in:
 - a) the exterior of the building (façade and external staircase);
 - b) the foyer and entrance on the ground floor;
 - c) the landscaping and entrance to the building adjoining the Huatoki; and
 - d) any other location agreed between the consent holder and Ngāti Te Whiti.
16. The consent holder shall engage Ngāti Te Whiti to provide a mauri stone for the water feature to be located in a position to be agreed between the consent holder and Ngāti Te Whiti.
17. At all times during the exercise of resource consent LUC20/47704, Ngāti Te Whiti Hapū shall be provided the opportunity to and be resourced to monitor all earthworks associated with the development.

Kaitiaki Forum

18. The consent holder shall convene and resource a Kaitiaki Forum. This Forum shall be established and commence immediately following granting of consent, prior to the preparation of any plans and any works commencing on site.
19. The function and purpose of the Kaitiaki Forum shall be formally agreed by the Consent Holder, Ngāti Te Whiti Hapū and Te Kotahitanga o Te Atiawa Trust and formally documented in a Forum Collaboration Agreement. This Agreement shall include, but not be limited to;
 - a) The matters the Forum shall consider including but not limited to cultural narrative, changes through the detailed design phase, hard and soft landscaping, mauri stone and associated infrastructure, subsequent developments of the Metro Plaza, cultural monitoring
 - b) The entities to be represented on the Forum
 - c) The number of representatives from the entities on the Forum
 - d) The frequency at which the Forum shall meet
 - e) The certification process that shall be utilised in the Forum
 - f) The duration of the Forum
 - g) A dispute resolution clause.
20. A copy of the Forum Collaboration Agreement shall be provided to the New Plymouth District Council Planning Lead or nominee.

NPDC Land Encroachment

21. The Access through the building's ground floor connecting to the adjoining NPDC-owned land shall require a pedestrian access easement in favour of that adjoining land (Lot 2 DP 15492).
22. Public pedestrian access through the buildings ground floor connection between Brougham Street and the sites eastern elevation shall be maintained at all times.

Advice notes

- a) *The granting of this consent does not permit the building encroachments into the NPDC-owned adjoining property to the north-east (Lot 2 DP 15492). The consent holder is advised to formalise arrangements for the use of that land on such terms as the landowner NPDC determines appropriate as soon as possible and prior to any application for a building consent.*
- b) *With regard to the encroachment of the canopy shown on Drawing Number A2.02 along the building's eastern elevation, the consent holder will need to enter into a lease or such alternative formal legal arrangement as may be acceptable to NPDC, in order to formally document the encroachment of the canopy into NPDC-owned Lot 2 DP 15492 and access to the building over that NPDC-owned land.*
- c) *With regard to the encroachment of the stairwell and the small corner section of the building (north-east corner) as shown on Drawing Number A2.02, the consent holder will need to enter into a sale and purchase agreement for the purchase of that part of NPDC-owned Lot 2 DP 15492 which is encroached upon and complete the consequential boundary adjustment required to enable the land to be transferred pursuant to that agreement. The boundary adjustment would need to be approved prior to any application for a building consent.*
- d) *The sale and purchase, leasehold and easement values associated with the above will need to be determined through an independent valuation process.*

Basement Car Park and Vehicle Access

23. The basement carpark shall be formed in accordance with the scheme plans prepared by BOON teamarchitects on behalf of K.D. Holdings Limited and entitled: "Brougham Street Development – 51 Brougham Street, New Plymouth", Job No: 6400, Drawing No: A2.02, Date 12/01/2021.

Archaeology

24. The consent holder shall engage a suitably qualified archaeologist to develop archaeological protocols for site works and in obtaining an archaeological authority to damage the stone railway embankment within Lot 2 DP 15492.

25. Archaeological protocols shall be developed so that damage to the stone wall during the removal of the notable tree is limited as far as practicably possible. A copy of the protocols shall be supplied to Councils Planning Lead

Earthworks and Construction Management

26. Prior to any earthworks commencing on the site, the consent holder shall submit to the Council's Planning Lead, or nominee, for approval:
- i. Prior to earthworks being undertaken the Consent Holder shall provide a copy of an approved Traffic Management Plan to Council's Monitoring Team.
 - ii. An Earthworks Management Plan which identifies specific procedures associated with stormwater and soil management, dust and sediment control measures. The Earthworks Management Plan must include.
 - a. Dates for earthworks, timing and proposed duration;
 - b. Details of the sediment and dust control measures to be implemented on the site;
 - c. Measures for avoiding any carry of soil or any other material onto public roads;
 - d. Proposed earthworks traffic route;
 - e. No undermining of any adjoining areas of road reserve;
 - f. and
 - g. 24 hour contact phone numbers of the designated site liaison person/s responsible for handling queries and complaints regarding the earthwork activities;
 - i. A Construction Management Plan which identifies specific procedures associated with site incidents and prevention of potential effects on the surrounding environment and community, temporary traffic management associated with traffic, proposed long-term site management, occupation safety and health issues and measures. The Construction Management Plan must include:
 - a) A copy of this consent;
 - b) 24 hour contact phone numbers of the designated site liaison person/s responsible for handling queries and complaints regarding the construction programme and all construction activities;
 - c) An engagement process to inform adjoining business owners of the timetable of construction work.
 - d) Methodology for logging and handling queries and complaints regarding the construction programme and all construction activities;
 - e) Proposed transportation route/s;
 - f) Work hours, scheduling and timing of vehicle movements;
 - g) The location and layout of vehicle parking spaces for all vehicles associated with construction activities on the site, including those for construction workers' vehicles and construction related vehicles, over the entire construction period and how this will be managed;
 - h) The location and design of a temporary construction vehicle access point and traffic circulation through the site over the entire construction period;
 - i) Storage of construction plant and material; and

- j) Notification procedures between the consent holder and the Council's Planning Lead, or nominee, in respect of any changes to the approved Construction Management Plan.
27. Once approved, all earthwork and construction activities shall be undertaken in accordance with the approved Earthworks and Construction Management Plan.
 28. The consent holder shall notify the Council Monitoring Officer 17 days prior to any earthworks commencing to enable monitoring of this resource consent.
 29. The consent holders shall pay the council's costs of any monitoring that may be necessary to ensure compliance of the use with the conditions specified.

Water Connections

30. Prior to occupation, the building shall be connected to a water supply system which complies with the New Zealand Fire Service Firefighting Water Supplies Code of Conduct of practice SNZ PAS 4509:2008.
31. There are three existing water connections to the site, existing water connections to this development shall be upgraded to a manifold assembly type if required.

Stormwater

32. A stormwater report detailing how all stormwater on site, including the basement carpark, is going to be managed and treated prior to discharge to the receiving environment shall be provided to Council's Planning Lead. The report will need to be reviewed and approved by the Council's water and waste team prior building consent being lodged.

Advice Notes

- a) *NPDC's Water and Waste Department shall be required confirm that there is available water capacity within the network.*
- b) *The consent holder shall consult with NPDC's Water and Waste Development lead to confirm capacity of the 100mm Wastewater Pipe to service the development.*
- c) *At the time of building consent a stormwater management report shall be required to demonstrate the stormwater management methodology to be applied on site.*
- d) *Secondary flow paths shall be shown on a Plan and shall not be across private property.*

Roading

33. A commercial vehicle crossing shall be constructed to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard (Cl.3.3.17.1). An application with the appropriate fee shall be made to the Council for a new Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost.

NABERSNZ

34. The building shall achieve a minimum of a 5 star NABERSNZ energy base building certification. Confirmation of certification shall be supplied to Council's Planning Lead within one year of the completion of construction.

Additional Advice notes:

1. *Compliance with sound attenuation will be required to be demonstrated as part of the building consent application.*
2. *Any excavation that takes place within road reserve during this development shall require an approved Corridor Access Request (CAR). Refer to the "National Code of Practice for Utility Operators' Access to Transport Corridors" for additional information. Applications can be made via the website www.beforeUdig.co.nz or 0800 248 344. A CAR along with a Traffic Management Plan must be submitted a minimum of 5 working days before an operator intends to start work for minor works or 15 working days for major works and project works. All costs incurred shall be at the applicant's expense.*